THE HOME OFFICE

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By
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Permanent Under-Secretary of State in the Home Office, 1908–1922

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PREFACE

I HAVE been asked to give in this volume a short account of the Home Office, its functions, and the way in which its work is done. It is intended, not as an official text-book, but for the general reader or the student of administrative methods. It would indeed be impossible, within the limits of one volume, to give full details of even a few of the subjects of Home Office administration: still less would it be possible to discuss argumentatively the principles, occasionally the subject of controversy, by which that administration is guided. My account, for instance, of the prison system is necessarily a bare outline. Those who wish to have a full exposition of the administration of Prisons and Borstal Institutions should read Sir Evelyn Ruggles-Brise's "English Prison System," a book much larger than the whole of this volume.

Though this volume is not a text-book, it may, I hope, be of some value to members of the Home Office staff, if only to give those whose work is confined to a particular branch a general view of the whole department to which they belong. It may also give young men who are thinking of the Civil Service as a career some idea of the nature of the work in one at least of the great departments of state.

It may be thought that too much space has been given in so short a sketch to historical summaries

of how present powers and functions have originated and developed; but the meaning of existing laws and regulations cannot be understood if the conditions which gave rise to them are forgotten. No one can, for instance, appreciate the value of the factory laws who knows little or nothing of the appalling industrial conditions out of which they grew and which but for them might still exist. It was, I think, Robert Louis Stevenson who somewhere spoke of hordes of inspectors who, notebook and pencil in hand, darkened the land. It seems therefore desirable that both the administrators and the critics of the factory law should have in their minds a clear picture of the bright and airy cotton-mills in which women and infant children enjoyed fourteen hours of work a day before the factory inspectors came with their notebooks, pencils, and revolutionary powers. So too those who seek to appraise the merits or demerits of the prison administration should keep well in memory the enviable condition of prisoners in days when prisons were still run by gaolers as profit-making concerns free from the inconveniences of government interference What I have said on such matters is merely an indication of what should be studied on a wider scale

I have not attempted to adjust the length of my remarks on any subject to the amount of Home Office work it represents. If I had done so, the space given to Industrial Law and to the Control of Aliens would have had to be doubled or trebled while the historically interesting formalities attending the appointment of a bishop would have been allowed barely a line and a half.

I have observed the rule that the work of permanent officials is anonymous, much as I have been tempted to mention by name colleagues or predecessors to whose efforts this or that reform or improvement has been mainly due.

I have received valuable assistance from several of my old colleagues for which I cannot too warmly thank them. If I have succeeded in stating the law and practice in general terms and yet with substantial accuracy, it must be attributed to their help and criticism; but where I have ventured to express an opinion on any disputed point, I am alone responsible.

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Chapter I

INTRODUCTORY

THE Home Secretary is one of His Majesty's six Principal Secretaries of State. He takes precedence of the other five. He is charged with all the home affairs of England and Wales except those, such as education, health, and agriculture, which are assigned to other and newer departments. He also represents Northern Ireland in the British Cabinet, and a few of his powers extend to Scotland.

The origin and history of the Office will be the subject of the next chapter, but there is one preliminary point which is essential to the understanding of the historical and legal position. There is only one *office* of Principal Secretary of State whether it is held by one, two or several persons. At first there was only one holder; and later, when there were two or three, and now when there are six, they hold a single office and their powers are equal and interchangeable. Acts of Parliament confer powers, not on the Home Secretary or the Foreign Secretary, but on "a Secretary of State" which by statutory definition means "one of His Majesty's Principal Secretaries of State." The division* of

* There are one or two exceptions to this. In 1855 the Secretary of State for the *War* Department was by statute enabled to hold land as a corporation sole: and there are two acts in which *per incuriam* the Secretary of State *for the Home Department* is mentioned.

functions between them is matter merely of arrangement. Each can legally exercise all the powers which in practice belong to the others, and when one is absent another acts in his place. Thus when Mr. Churchill took leave from the Home Office in 1910 to visit the Mediterranean and Constantinople, Lord Haldane acted in his place and as Home Secretary cheerfully rejected a proposal which he himself had put forward a few weeks before as Secretary of State for War. In the same way when Lord Cave, being then Home Secretary, went in 1917 and 1918 to Holland to negotiate agreements for the exchange of invalid prisoners with Germany, the Secretary of State for India or the Colonies signed warrants and did other formal business in his place. As will be explained later, it was only in the year 1782 that the present distribution of work between Home and Foreign Secretaries was settled. Up till then each of them took part in both Home and Foreign affairs—much to the detriment of business.

The Home Secretary derives his administrative powers from two sources. His older powers arise from his position as the King's adviser in the exercise of his prerogative powers, such as the Prerogative of Mercy or the issuing of instructions to officers who act on the King's commands. His more recent powers, such as his powers in prison administration, the regulation of factory work, or the control of aliens, are conferred by Act of Parliament. It is impossible to draw a hard line between the two classes of functions, as the prerogative powers have sometimes been modified or defined by statute,

but in this volume Chapters III, IV and V ("The King's Pleasure," "The King's Peace," and "The Prerogative of Mercy") are concerned chiefly with prerogative powers, while Chapters VI to XVI deal mainly with powers and duties created by statute.

The Home Secretary, like the other Secretaries of State, is appointed by the King on the recommendation of the Prime Minister. His appointment is effected by the King's handing to him the seals of office.* He then takes the oath and his appointment is notified in the *London Gazette*, but there is no formal document of appointment.

The Home Office is simply the office of the Home Secretary.† The terms "Home Office" and "Home Secretary" are almost interchangeable, and in the following chapters are never used in contradistinction except when a personal act like the signing of a document is attributed to the Home Secretary. Whatever the Home Office does it does by authority of the Home Secretary, either obeying his direct instruction in an individual matter, or carrying out a policy for which he accepts responsibility. When a Home Secretary comes

* There are three secretarial seals, the signet, the lesser seal, and the cachet. Only the second of these is now actually used in the Home Office.

† The term "Home Office" is sometimes restricted to the Home Secretary and the Home Office Secretariat, but here and elsewhere in this volume (unless the contrary is stated) it includes the Home Office Inspectorates and the Prison Commissioners. The latter have statutory powers of their own, but in all matters of policy are subject to the Home Secretary's approval and control. The term does not include New Scotland Yard or the Office of the Director of Public Prosecutions.

into office, he finds himself at the head of a great organization, based on the prerogative powers of the King and on a long series of parliamentary enactments, and guided in its working by a mass of principles, rules and precedents which embody the results of innumerable discussions and settlements and of long practical experience, but which are constantly being modified or added to as new movements or changing circumstances demand: and according to his personality, ability and energy he will either leave his own impress on the structure (as Sir William Harcourt did pre-eminently) or be content to keep the machinery running as he found it. In the administrative officers of the department he is provided with a staff whose duties are to inform him of the law, principles and practice, to advise him in matters in which he exercises a discretion, and for the rest to keep the organization at work on the lines fixed by his predecessors, unless and until in some particular he initiates or approves a policy which gives it a new direction. All that they do is done by his authority express or implied.

In addition to the administrative duties for the carrying out of which the Home Office exists, the Home Secretary has duties as a member of the Cabinet, and as a minister in Parliament. As a member of the Cabinet, in addition to taking his share in forming the policy of the Government, he has to bring before his colleagues any questions arising in home affairs which require their decision; and in preparing Cabinet memoranda he of course commands the services of his advisers in the department. In Parliament he answers all questions not

only in matters within Home Office jurisdiction but also in domestic matters not within the scope of any department: he defends if necessary his policy and the proceedings of his office; and, with the assistance of his Parliamentary Under Secretary, he introduces and carries through the House of Commons the legislative measures prepared in his department and occasionally others of a more general character. In the House of Lords there is always a representative of the Home Office who is guided by the Home Secretary's instructions, but some of the more important Home Office measures are taken in charge by the Lord Chancellor, just as in the House of Commons the Home Secretary or the Attorney-General fathers the Lord Chancellor's bills and answers questions in matters for which he is responsible.

It is sometimes suggested that it is a weakness in our government system that the parliamentary head of an important department like the Home Office has usually no previous knowledge or experience of its work. This is a mistaken view. What is required of a Home Secretary is not departmental knowledge or experience: these can be supplied him by the permanent staff. His essential qualities are sound judgment, courage, and moral power to command the confidence of the House of Commons. An able man, possessing these qualities, is a good Home Secretary from the day he enters on office. Even skill or readiness in debate is not essential. Lord Ridley, though not a distinguished debater, made a good Home Secretary in the House of Commons: so complete was the

confidence of the House in his honesty and judgment that on one occasion, when he found it necessary after consideration to withdraw a definite pledge he had given on the second reading of a bill, the House accepted his decision without protest or murmur.

Nor is it important, as is sometimes asserted, that the Home Secretary should be a lawyer. Legal experience is of course useful, especially when points of law are sprung on him in debate, but it may also be a weakness if it means a habit of looking at administrative problems with an eye only to their legal bearings. One accomplished lawyer was perhaps the least successful Home Secretary of modern times.

The arrangement by which the parliamentary head of a public office changes with each change of government has some of the drawbacks which are often attributed to it; but, besides being necessary politically if Parliament is to retain its final control over the Executive, it is not without its administrative advantages. It brings into the Home Office now and then a man with fresh ideas and in close touch with public opinion: and coming in at the top, he is in the strongest position on the one hand to give an impulse to reform, and on the other to decide whether public opinion is ripe for new measures for which the permanent staff may be pressing.

Chapter II.

THE SECRETARY OF STATE: ORIGIN AND HISTORY OF THE OFFICE

THE office of Secretary of State, like many other high offices, has grown great from a comparatively humble beginning. Just as the Constable*—the Count of the Stable—of the Western Emperors became the Constable of France, the highest military officer of the French Kings: and just as the marshal* or "horse-servant" of the Teutonic Kings became Earl Marshal of England: so the post of *secretarius* or confidential clerk to the Plantagenet Kings developed by the time of Henry the Eighth into the high office of the Secretary of Estate which was held by Thomas Cromwell and by Queen Elizabeth's most powerful ministers, and in the present day has so expanded that six Secretaries of State sit in the Cabinet.

It is however difficult to say at what precise moment in history the *secretarius* of the King became a definite office. The word *secretarius* in the twelfth and thirteenth centuries usually retains its original sense of a person admitted to the secrets of another. We find the apostles Peter, James and John described as Christ's "secretarii": and the same term is applied to the accomplices of a criminal.

* Constable or Conestable from Lat. *comes stabuli*: Marshal or Marischal, O. H. G. *Maraschalh*, from *marah*, war-horse, and *schalh*, servant; Skeat, *Etymological Dictionary*.

The word occurs frequently in official documents, the King's counsellors and sometimes his ambassadors being described as his *secretarii:* but its use appears gradually to become restricted to the person who conducts a great man's correspondence and who therefore, especially in times when the great man could neither read nor write, was necessarily admitted to his secrets. In this sense the Chancellor was for a long period the King's secretary who followed the court and conducted his confidential correspondence: but by the twelfth century the Chancellor, as Keeper of the Great Seal used in all acts of state, had become the highest public functionary and the Chancery a public department in London, and the King found that he needed for his own work a private seal and an officer who should work by his side. This led to his providing himself with a Privy Seal and appointing a Keeper of the Privy Seal, who for another considerable period played the part of the King's confidential clerk, and was occasionally described officially as his "*secretarius.*"

But the Keeper of the Privy Seal, like the Lord Chancellor, developed in time into an officer of state so important that in the reign of Edward II the Lords Ordainers in their contest with the King claimed that he should be nominated by them: and once more the King had to provide himself with a new seal, the signet, for his private use, and to entrust his private correspondence to men of his own choosing, and thus at last the post of *secretarius* as keeper of the signet becomes a definite though still a comparatively humble office. "During

the middle of the fourteenth century the signet was gradually superseding the privy seal as the seal for the King's private use, and the clerk of his chamber who kept the signet was gradually employed more and more exclusively on secretarial business, until the title of Secretary was by Richard II's reign (1377-99) officially applied to him. . . . The fifteenth century opens with the signet firmly established as the third and most private of the King's three official seals. It is used both to authorise issues under the privy seal and chancery and to seal the personal correspondence of the sovereign, and its keeper, a subordinate household officer, is officially known as the King's Secretary."*

Thus it came about that, while in the eleventh century the King gave verbally to the Chancellor the instructions on which he issued an instrument under the Great Seal: and while in the thirteenth century the King gave his verbal instructions to the Keeper of the Privy Seal who conveyed these instructions under the Privy Seal to the Chancellor who thereupon issued the instrument under the Great Seal: in the fifteenth century the King expressed his wishes to his Secretary who communicated them under the signet or the sign manual to the Keeper of the Privy Seal, who passed them on under the Privy Seal to the Chancellor who

* Miss F. G. Evans (Mrs. Higham), *The Principal Secretary of State: a Survey of the Office from* 1558 *to* 1680. (Manchester University Press, 1924.) p. 14. The early history of the Secretary of State's Office is thoroughly investigated in this able work which has been consulted freely in the earlier part of this chapter. Miss L. Dibben's article on "*Secretaries in the* 13*th and* 14*th Centuries*," E.H.R., XXV, 430, has also been consulted.

thereupon issued the instrument under the Great Seal. This last cumbrous procedure, a fossilized record of the rise of the several offices, has survived almost to the present day. The creation, for instance, of a peer was by letters patent under the Great Seal issued on the authority of an instrument under the Privy Seal which had in turn been authorised by a warrant under the sign manual countersigned by the Secretary of State. The process was shortened by the Great Seal Act of 1884 which made the intervention of the Privy Seal unnecessary: but it is still the law that the letters patent are sealed with the Great Seal on the authority of a royal warrant countersigned by a Secretary of State.

Though the office of King's Secretary, like the Chancellorship and the Privy Seal, was soon to become a public office of the highest rank, it was still at the end of the fourteenth and the beginning of the fifteenth century little more than a household post. The holder is described as "the beloved clerk who stays continually by our side." He controlled the household and kept minute accounts of the daily expenditure and receipts. In precedence and pay he took rank by royal ordinance with the King's surgeon and the clerk of the kitchen.* He usually began his career as one of the clerks of the Privy Seal office, and, as he was always a cleric, he naturally looked for his ultimate reward in a bishopric.

During the fifteenth century the office grew in importance and repute, but it was under the personal rule of the Tudors that the Secretary of State

* Anson, *Law and Custom of the Constitution*, Vol. II (I), 165.

attained what was in actual power, though not in form or precedence, the highest position under the Crown. When the sovereign personally controlled the policy of the state he naturally chose the ablest man he could find to advise him and carry out his policy, and that man naturally absorbed power into his own hands. We know little of the Secretaries under Henry VII, and during the earlier part of the reign of Henry VIII they were subordinate to Wolsey: but when Wolsey fell Gardiner and after him Thomas Cromwell "raised the office of Chief Secretary to heights of importance never yet reached." Of Gardiner Henry said "that in his Secretary's absence he felt as though he had lost his right hand," and Cromwell, the first layman appointed Secretary of State, held for several years without rival the position of Henry's chief minister. It was in 1540 after Cromwell's fall that for the first time two Secretaries of equal standing were appointed, express provision being made in the warrant of appointment that they were to hold the one office of principal secretary and to be in every way equal. From that time there were, as suited the Sovereign, sometimes two secretaries, sometimes only one, and occasionally an interval when there were none: it was not till the seventeenth century that the practice of appointing two secretaries was definitely established.

On the accession of Elizabeth, William Cecil, afterwards Lord Burghley, was as her Secretary of State the first to take the oath of fealty, and for nearly forty years he stood easily first among her ministers and counsellors. The conditions in which

he had to carry on the Government of a wayward and wilful queen in a country filled with religious strife and political animosities demanded wide and elastic powers, and such powers naturally belonged to the office of Secretary of State depending as it did not on any legal formulæ but on his claim to be exponent of the Royal Pleasure. Even after he accepted in 1572 the nominally higher office of Lord Treasurer he still in practice acted as Secretary of State; and, though for a time he found a dangerous rival in Mr. Secretary Walsingham, he was able after Walsingham's death, to keep the office vacant for six years and then to secure it with undiminished powers for his son Robert Cecil. Next to his great diplomatic skill, nothing was more remarkable in Burghley than his administrative ability and devotion to business. The Secretary of State had not in those days a very large or efficient staff, and had himself to do much work that would now be delegated to Under Secretaries and others: yet he never allowed business to fall in arrear. "There was not a daie in terme when he received not threescore, fourescore or a hundred petitions, which he commonly read that night and gave every man answere himself next day as he went to the hall. . . . He was patient in hearing, ready in despatching and myld in answering suitors." *

Robert Cecil, afterwards Earl of Salisbury, was appointed Secretary of State in 1596, and during the last years of Elizabeth's reign his position was

* Peck, *Desiderata Curiosa*—quoted in Bigham's *Chief Ministers of England.*

even stronger than his father's at the beginning. On the accession of James I he retained his secretaryship and his commanding position; but after his death in 1612 there came a period when royal favourites held the first place in the King's counsels, and the Secretaries of State, who were usually their nominees, played a secondary part in the political intrigues of the time or at best confined themselves to the departmental exercise of their recognised functions. It was during this period that the appointment of two Secretaries with one office and equal powers became the established practice: at first one of them usually followed the court, the other remaining in charge of the office in London: but in 1640, when Sir Harry Vane was appointed, a formal division of foreign business between the two secretaries was arranged, Vane taking France, Holland, Germany and the Baltic States, and his colleague Spain, Flanders and Italy. This was the beginning of the division into Northern and Southern departments, which lasted till 1782 and has always appeared so unintelligible. Mrs. Higham has shown* that the formal division made in 1640 was really the recognition of a division already adopted in practice in the reign of James I, and that its basis was religious and political rather than geographical, one Secretary being chosen as *persona grata* to the Protestant powers and the other to the Catholic governments.

For Cromwell as Lord Protector one Secretary of State sufficed, but he was of a very different stamp from his predecessors and successors under

* *The Principal Secretary of State*, pp. 102-4.

the Stuarts. Thurloe was essentially a strong man and an efficient administrator, and he organized his work and staff on something like a modern basis. It is interesting to note that he had three poets on his staff—Andrew Marvell, Milton and Dryden. Marvell was a full-time officer, but the other two held semi-independent positions, and probably were not much concerned in the main business of the office. Thurloe had to concentrate his great energies on what in recent times would be called emergency work. He had to provide the secret service, the postal control and the press control which are justified only when the state is in imminent danger. The English secret service is apt to languish in normal times: but after a year or two of national danger, the military secret service becomes, as it did in the Napoleonic Wars and in the Great War, second to none in the world. Thurloe through agents at home and abroad whom he appointed and provided with secret service funds supplied the information which enabled Cromwell to defeat every royalist plot. At the same time he organised the Post Office on a national basis, and carried on the normal duties of the Secretary's office with an efficiency which left its mark when the King returned and the secretaryship passed into other hands.

Under Charles II and James II some Secretaries of State were, like Arlington, mainly concerned in politics and intrigue, but there were others like Mr. Secretary Williamson who were content to attend to the every-day administrative work of their department, and only got into trouble when

they carried out too faithfully the royal pleasure. The doctrine of ministerial responsibility to Parliament was now taking shape, and it was applied with rigour in 1678, at the time of excitement over the pretended popish plot, when the House of Commons discovered that "there were several commissions granted to popish recusants . . . and that they were signed by Mr. Secretary Williamson," and forthwith sent him to the Tower. In signing the commissions Williamson was carrying out the policy of the King, and the King released him from the Tower next morning, but the lesson was not forgotten and we find the incident quoted nearly a century later when the action of a Secretary of State in issuing general warrants was questioned in the courts.

During the reigns of Anne and the two first Georges the personal control of the Sovereign, which had been exercised effectively by William III, fell into abeyance, and the Secretaries of State and Lords of the Treasury, not being subject as in Elizabeth's time to the will of a masterful queen, exercised a power which would have been greater than that of the Cecils had it not been tempered by an increasing responsibility to Parliament. The Secretary of State now "gathered into his own hands the power hitherto exercised by the King, by the Committee of the Whole Council or by the same Council in co-operation with the King."* In Queen Anne's reign, Robert Harley, Earl of Oxford, while holding the office of Secretary of State (he held it for a year jointly

* Prof. Andrews, *Materials for American History*, I, p. 18.

with the Speakership), reached or almost reached the position of chief minister of the Crown: and it might have come about that the premiership should be associated with the office of Secretary of State rather than with that of First Lord of the Treasury had it not been that the light administrative duties of the latter made it a better post for the minister who presides over the cabinet and controls the general policy of the government. Though as a rule the Prime Minister's official post has been in the Treasury, the elder Pitt and Fox were practically prime ministers while they held the Secretary of State's seals, and Lord Salisbury in 1885, 1886, and 1895, sent one of his colleagues to the Treasury, and himself combined the premiership with the Secretaryship for Foreign Affairs.

The first Prime Minister in the modern sense was Walpole, and from his accession to power the Secretaries of State took their places in the cabinet which also was now assuming its modern form. Twice before 1782 their number was increased to three, a third being added for Scots affairs after the Union and abolished after Culloden, and a similar appointment being made for colonial affairs during the war with the American Colonies. But the chief event in the history of the office during these years was the check put on its assumption of arbitrary powers extending beyond the proper limits of the King's prerogative. From the Revolution onwards, while there was constant fear of plots and revolt on behalf of the exiled Stuarts, it had become the practice for the Secretary of State to issue warrants of arrest, to examine the

arrested persons personally or by the members of his staff, and to issue search warrants, which were sometimes general search warrants for the seizure of papers. Had this gone on, it seems possible that the Secretariat might have developed not towards the Premiership but in a very different direction, and the Home Secretary might have become a mere Minister of Police, himself directing criminal investigations like a milder and more scrupulous Fouché. But methods which were tolerated when used against Stuart conspirators, could not with impunity be employed against troublesome citizens. When Wilkes' house was searched and his papers taken under a general warrant (that is, a warrant where no name was specified and a general power was given to the holder to search wherever his suspicion might fall) the Court held, in the case of *Wilkes v. Wood*,* that the general warrant was unconstitutional and everything done under it illegal, and damages to the extent of £1,000 were given to the plaintiff: and in *Endick v. Carrington*† Lord Camden C.J. decided that the Secretary of State was ex-officio neither a Justice of the Peace nor a Conservator of the Peace and that warrants of arrest or of search issued by him had no validity. It was admitted that he might issue warrants on a charge of treason, but this not very logical exception did not detract from the finality of the decision, and the attempts of the Secretary of State to act personally as a Director of Criminal Investigations came to an end.

* *St. Tri.*, XIX, 1154.
† *St. Tri.*, XIX, 1030.

The Home Office, 1782-1924.

In 1782 the Home Office and the Foreign Office came into existence as separate departments. Before that date there had been for a century and a half (except during the Commonwealth) two Secretaries of State, a Secretary of State for the Northern Department in charge of all business relating to Northern Powers of Europe, and a Secretary of State for the Southern Department who looked after France and the Southern Countries. The senior of the two took Ireland; and the Colonies, except while there was a third Secretary of State, and Home Affairs went indifferently to either. As already mentioned the original reason for the division was political, the two departments being taken by officers friendly to the protestant and catholic powers respectively; but after the Restoration no attempt was made to maintain this distinction, and the distribution of duties became purely arbitrary, the Northern Secretary frequently succeeding to the Southern Department when his colleague retired. The arrangement led to endless confusion and difficulties: and nothing but an obstinate conservatism could have retained it for more than a hundred years after it had become useless, especially as the staff and office work and records had long been divided into the departments of foreign and "domestical."

It was due to Charles James Fox that this anomaly was at last terminated. On 27th March, 1782, when the Rockingham Ministry had been formed with Fox and Shelburne as the two Secretaries of

State, Fox sent the following circular to the representatives of foreign powers in London: "The King having, on the resignation of Viscount Stormont, been pleased to appoint me one of His Majesty's Principal Secretaries of State, and at the same time to make a new arrangement in the departments by conferring that for Domestic Affairs and the Colonies on the Earl of Shelburne and entrusting me with the sole direction of Foreign Affairs, I am to request that you will for the future address your letters to me."

Lord Shelburne, afterwards Marquis of Lansdowne, was therefore the first Home Secretary. As a peer he would take precedence of Fox and probably that is the origin of the rule that the Home Secretary takes precedence of all other Secretaries. He is *the* Secretary of State, the others are the Secretary of State for Foreign Affairs, for War or for the Colonies.

At this date the Home Secretary possessed none of the vast mass of statutory powers and duties which have been conferred on him by subsequent legislation such as the Prison Acts, the Police Acts and the Factory Acts. With a few unimportant exceptions his functions were those which had arisen in the course of four centuries from the position of his predecessors as Secretaries to the King, and which were now recognised by custom and by the decisions of the courts of law as part of the constitution.

First, he was the sole channel by which the subject might approach the King. All petitions from subjects, and even addresses by Parliament,

had to pass through his hands and were answered through him and generally on his advice.

Secondly, he was the King's adviser in the exercise of his prerogative powers such as the Prerogative of Mercy.

Thirdly, he issued on behalf of the King His Majesty's instructions to officers of the Crown, to Lords Lieutenant, Magistrates, Governors of Colonies and others, and sometimes to local authorities.

The work of his office, to judge by the published Calendars of Home Office papers,* consisted chiefly in considering petitions for pardon and granting numerous free pardons and commutations of sentence, in dealing with petitions to the King of all sorts, in granting commissions including commissions in the army, in issuing directions as to movements of troops in England and Ireland, and in correspondence with the Lord Lieutenant of Ireland, with the Lord Advocate and Scottish authorities, and with the Governors of Colonies, the Channel Islands and the Isle of Man. The maintenance of order was a matter that occupied much of his attention: and one of Lord Shelburne's first official acts, the country being then at war with France, Spain and the American Colonies, was to issue a circular to the mayors of the principal towns directing them to take steps for the enrolment of volunteers for the national defence.

* *Calendars of Home Office papers*, Vol. I to IV, covering the years 1760 to 1775. The staff and papers of the Secretariat were already divided into Foreign and "Domestical" on the same basis as the subsequent division of the functions of the Secretaries of State.

From 1782 to the present time, the history of the department, so far as concerns its functions and powers, consists, on the one hand, of the extension of its jurisdiction to new subjects by a long series of Acts of Parliament, and on the other, of the removal from its jurisdiction also by Parliament of certain subjects which had so grown in importance that new departments of state had to be created to deal with them.

The first formation of a new department followed the outbreak of the war which the French Convention forced on Pitt in 1793. In 1794 a Secretary of State for War was appointed who took over all the powers of the Home Secretary relating to the army (except the movement of troops in this country for the maintenance of order), and seven years later he took over also all powers relating to the Colonies. It is interesting to note that since 1782 the number of Secretaries of State has been increased from two to six in each case as the result of war: the Secretary of State for War as just mentioned was appointed at the beginning of the war with France, the Secretary of State for the Colonies was appointed in 1854 to relieve the War Office from colonial business during the Crimean, the Secretary of State for India in 1858 as a result of the Indian Mutiny, and the Secretary of State for Air in 1918 to deal with the vast expansion of aerial warfare in the Great War.

The French war was also responsible for the passing in 1793 of Lord Grenville's Aliens Act, which conferred on the Secretary of State an extensive jurisdiction over aliens with powers which

closely resemble the powers conferred by the Aliens Act of 1914. After this the country and Parliament were for twenty years too deeply engaged in the long contest with Napoleon to interest themselves in domestic legislation, but when that war and the troubles that immediately followed it were over, the time had come for large measures of reform in which the leading part was taken by Sir Robert Peel who of all Home Secretaries has left the deepest impress on the laws and institutions of the country. He passed the eight Criminal Law Acts which introduced some degree of humanity into our penal code; the Prison Act of 1823, which attacked some of the worst abuses and began the process, completed by the Prison Act of 1877, by which Prisons were brought under the jurisdiction of the Home Office: and the Metropolitan Police Act of 1829 which established under the control of the Home Secretary the first large disciplined and uniformed police force—a force which became the model for the Borough Forces and County Forces established under subsequent Acts.

A little later the industrial legislation which was necessary to remedy the appalling evils which had arisen in the train of the Industrial Revolution began to take effective shape. Lord Shaftesbury's Factory Act of 1833, imposed substantial restrictions on the hours of labour of children and young persons and for the first time empowered the Home Secretary to appoint inspectors to enforce them: and the Mines Act of 1842 forbade the underground employment of women and of boys under ten. These have been followed by long

series of acts which have secured great benefits to every class of workpeople while in their result assisting rather than hampering the industries.

In 1844 the Home Office was given, by a private member's bill, statutory powers for the naturalisation of aliens. In 1854 Lord Palmerston as Home Secretary passed the first Reformatory School Act, and the first Industrial School Act; and in 1875 the Explosives Act, passed by Sir Richard Cross after the blowing up in Regents Park of a canal boat laden with gunpowder, put all explosives under Home Office regulations.

The first important transfer of domestic work to a new department took place in 1871 when the Local Government Board was established and assumed the powers and duties of the Poor Law Board and of the Local Government Branch of the Home Office. In 1885 the Scottish Office was formed and by the Acts of that Session and of 1887 was charged with all Scottish criminal business and all such functions of the Home Secretary relating to Scotland as could be separated from their application in England. Four years later in 1889 the Board of Agriculture was constituted, and besides taking over some other Home Office functions absorbed the Land Commissioners, hitherto a sub-department of the Home Office. Freshwater Fisheries, which had been transferred from the Home Office to the Board of Trade in 1886, passed a little later to the Board of Agriculture and Fisheries.

In spite of these transfers the amount of work falling on the Home Office increased steadily.

Its powers in regard to factories, mines, prisons and police were extended by new acts, and many new subjects were brought within its jurisdiction either by Act of Parliament, such as vivisection, wild birds, workmen's compensation, inebriates, intoxicating liquors, cremation, dangerous drugs and probation, or to carry out International Agreements, such as those relating to "white slave traffic" and indecent publications.

Generally speaking, when Parliament decides to bring any new domestic matter under government regulation, unless it is a matter specifically coming within the sphere of some other department, the Home Office, as the original department for all home affairs, is the department on which the new charge is laid, and for this reason it has to deal with a great number of apparently unconnected subjects. When any of these subjects so develops as to require the creation of a special department of State, the new department takes over the Home Office powers and adds to them any fresh powers given it by legislation. The last two transfers of work from the Home Office illustrate this.

The Aerial Navigation Acts passed before the war conferred on the Home Office powers for the control of civil aircraft, and when, as the result of development of aerial warfare, a Secretary of State for Air was appointed, he was given, in addition to new and extensive military authority, the civil powers which the Home Secretary had previously exercised.

So in 1920 when the Mines Department was formed, it was clothed, in addition to new functions,

with all the powers which the Home Office possessed for the administration of the Mines and Quarries Acts.

In conclusion it may be said that, leaving aside the War and Colonial Offices and the Air Ministry, the Home Office is the parent, and provided at least the nucleus of the powers, of four new departments of State—the Ministry of Health, the Scottish Office, the Board of Agriculture, and the Mines Department.

Chapter III

THE KING'S PLEASURE

In any review of the work of the Home Office the first place belongs to those Prerogative powers of the Crown which are exercised by the Home Secretary or on his advice.

The Royal Prerogative, it has been said, "comprehends all the special dignities, privileges, powers and royalties allowed by the common law to the Crown of England."* "By virtue of the Prerogative the Sovereign is the supreme executive authority in the state, and all executive acts are done in his name."† The King cannot alter the law, and he is bound by the decisions of the courts of law: but within the limits of the law, he is head of the Church, of the Civil Service, of the military forces, and of the Police.

The powers which the Sovereign thus possesses, once very wide, have now been narrowed, partly by express Acts of Parliament, partly by constitutional usage equivalent to law. Of the powers that remain, some of the most important are within the province of ministers other than the Home Secretary: treaties and relations with foreign powers fall to the Foreign Office, military and naval matters to the Secretary of State for War

* Halsbury, *Encyc. of the Laws of England*, VI, 523.

† Ibid. 579.

and the Admiralty, the summoning and dissolution of Parliament and the supreme direction of the policy of the Crown to the Prime Minister in consultation with the Cabinet. The Home Secretary is however in the position as it were of a residuary legatee*: all that is not assigned by law or established custom to some other minister falls to him.

The most important of the Prerogative Powers that are still exercised by the Home Secretary are the Prerogative of Pardon and the maintenance of the King's Peace. These require separate treatment and are reserved for the next two chapters. Here we shall consider those relating to (I) Addresses and Petitions, (II) Honours, (III) The Church, (IV) Royal Commissions, and (V) Certain minor functions.

I. The Secretary of State is the channel of communication between the Sovereign and his subjects: all *addresses and petitions* to the King pass through his hands, and he advises him as to the answers to be given and sends the answers the King approves.

Thus addresses by Parliament are submitted to the King by the Home Secretary and he advises as to the terms of the replies which should be sent. Even the King's Speech at the opening of Parliament, which is settled on the advice of the Cabinet, is formally communicated before it is read to the Speaker by the Home Secretary.

All addresses to the King by public bodies, such

* "The Home Secretary is a kind of residuary legatee": Lowell, *Government of England*, I, 105.

as are read when the King opens a building or lays a foundation stone, are first submitted to the Home Office and are examined to see that they are in proper form. When an address contained such a solecism as for instance a description of King Edward as a member of the Saxe-Coburg-Gotha dynasty, it was returned for correction. The replies to these addresses are drafted in the Home Office, sometimes with a previous indication from the King as to what he desires to say, and the drafts are always submitted personally to His Majesty and not infrequently altered by him. On great state occasions, such as a jubilee, a coronation or a royal marriage, addresses of congratulations from public bodies are received in the Home Office in thousands, and on the death of the Sovereign or of a member of the Royal Family there are similar addresses of condolence. The actual addresses some of them finely illuminated are submitted to the King, and, the general form of reply having been approved by him, the acknowledgments are sent from the Home Office. Certain bodies, the Archbishop and Clergy of the Provinces of Canterbury and York, the Protestant Dissenting Ministers of the three Denominations, the Universities of Oxford and Cambridge, the Corporation of the City of London, etc. have, by long prescription or express grant, a right to present their addresses in person to the King, and this privilege may on occasion be extended to other bodies: the Home Secretary arranges for the reception of these deputations and attends the presentation.

Petitions to the King are much fewer than

formerly. Many of the matters on which the subject formerly petitioned the King are now governed by specific legislation which has in effect superseded the King's executive power. The grant of pensions for instance, now regulated by law, was at one time the subject of occasional petitions to the King. Thus in 1774 the impoverished Duke of St. Albans presented a petition asking for a pension adequate to his rank. The usual form of negative reply to a petition is that "the Secretary of State regrets that he has been unable to advise His Majesty to issue any Commands," but in this case there was a refreshing variation from the usual terms. The Secretary of State wrote: "I have obeyed your Grace's Commands by presenting your memorial to the King. His Majesty put it in his pocket without expressing His Pleasure one way or the other on the occasion."*

On matters not specifically dealt with by legislation, and sometimes in spite of their being so dealt with, a good number of petitions are still received. Many refer to matters within the scope of other departments, and to these the answer is that "the petition has been submitted to His Majesty who has been pleased to direct that it be referred to" the Admiralty or the Board of Trade or some other department. Others complain of decisions of the Civil Courts or relate to other matters entirely outside the prerogative and to these a negative reply has to be sent. The chief classes of petitions on which action has to be taken are those relating to the Prerogative of Mercy to be

* *Calendars of Home Office papers*, IV, 653.

discussed in a later chapter, and applications for grants of arms, change of name, etc. referred to below. There are also "petitions of right,"* that is petitions for permission to take proceedings against the Crown in those cases in which, on the old theory that the King could not be sued in his own courts, proceedings against government departments were excluded. These are referred to the Attorney General, and, except where the claim is obviously frivolous, he always advises that the petition should be granted: they are then submitted by the Home Secretary to the King with a recommendation that the fiat "Let Right be done" should be given. Applications for Licences in Mortmain are also referred to the Attorney General for advice, and, if his reply is favourable, the Home Secretary takes the King's Pleasure and submits to him a warrant for the issue of letters patent under the Great Seal.

11. One of the oldest prerogatives of the Crown and one which remains unimpaired by legislation is the *grant of honours*: "The Crown is the fountain of Honour."† The part played by the Secretary of State was never a predominant one in the exercise of this prerogative, and, as regards the highest honours, it is now little more than formal. The recommendations to the King for the grant of peerages and baronetcies are of course made by the Prime Minister: the Home Secretary receives

* The form of these petitions is prescribed by the Petitions of Right Act, 1860.

† Blackstone, I, 271.

merely a semi-official notice from Downing Street that the King is pleased to create so and so a peer or a baronet, and the department then proceeds to obtain from the Crown Office* for submission to the King a warrant to authorise the passing of letters patent under the Great Seal, first ascertaining the title to be adopted, and on rare occasions having to deal with difficult questions as to special remainders. The Register of the Baronetage is kept in the Home Office. It is also the painful duty of the Home Office to collect the fees from the recipients of these honours now payable to the Exchequer. On one occasion the refusal of a baronet designate to pay fees which he regarded as exorbitant delayed the issue of his letters patent for years: but happily the Treasury can usually be induced to remit the greater part of the fees to those persons, usually not of very ample means, who have received the honour for distinguished work in the public service.

For knights bachelor no such formalities are necessary and no fees are imposed. Persons on whom knighthood is to be conferred in this country are presented to the King by the Home Secretary at an investiture and they are knights when they have received the accolade.

The Home Secretary has no duties in connection with the various Orders of Knighthood—Garter, Thistle, St. Patrick, Bath, Star of India, St. Michael and

* It might be supposed that the Home Office would be able to prepare its own warrants in these cases: but the Clerk of the Crown Office possesses, by the Great Seal Act of 1884, an exclusive right to prepare them. Any one else who presumes to do so is guilty of a misdemeanour!

grant of the privilege of using the *title Royal* or Imperial, often sought by societies, hospitals and yachting or golf clubs—a matter which involves inquiries as to the standing, financial position and other qualifications of the petitioning body and the exercise of a careful discrimination as to the cases in which the King should be advised to grant the privilege. The same remark applies to applications for permission to use the Royal Arms, a privilege which does not follow from the grant of the title Royal.

It is on the recommendation of the Home Secretary that the status of *City*, formerly confined to towns which were the sees of bishops, has been granted to some other great and populous boroughs: and that the title of "Lord Mayor," to which the Mayors of London and York alone possesed a prescriptive right, has been granted to the Mayors of several other cities of the first rank.

III. The King is by law the head of the *Church of England*: and "the Home Secretary is the proper medium of communication between the King and the Church."*

Thus the Home Secretary communicates to Convocation the King's Pleasure regarding the discussion of any alteration of the canons of the Church. If the authorities of the Church and the government are agreed that any matter should be considered with a view to making, amending or repealing a canon, the Home Secretary submits

* Halsbury, *Encyc. of the Laws of England*, VII, 83. If the Home Secretary is *extra ecclesiam* his duties are discharged by the First Lord of the Treasury.

to the King, counter-signs and sends to the Archbishop, Letters of Business which indicate the matters to be discussed and are accompanied by a licence for the making amending or alteration of a canon. If a canon is passed the Home Secretary submits it to the King to assent and to give permission to "promulge" the new canon: or, it may be, writes to the Archbishop explaining why assent cannot be given.

Such canons bind the clergy, but do not, unless confirmed by act of Parliament, extend to the laity: but the Act of 1919 which approved of the constitution of the "Church Assembly," introduced a new procedure for passing "Church Measures" which should have full force of law. Measures passed by the Assembly, if approved by an "Ecclesiastical Committee" composed of fifteen members of each house of Parliament, may, on a resolution passed by both Houses, be presented to the King, and on receiving his assent they take effect as statute law.

In the appointment of Archbishops, Bishops, Deans and Canons, the King's adviser is now the Prime Minister and the Home Secretary's functions are ministerial only. On being told by the Prime Minister the King's Pleasure as to the appointment of a bishop, he submits for His Majesty's signature the warrant (prepared in the Crown Office) for the issue of Letters Patent under the Great Seal,*

* In these documents an ancient and interesting distinction between an archbishop and a bishop is observed by the Crown Office. The former is "Archbishop by divine providence," the latter "Bishop by divine permission."

containing the licence (Congé d'elire) which authorises the Dean and Chapter to elect a bishop and is accompanied by a "letter-missive" instructing them whom to elect. On receiving the certificate of the electors that the person named has been elected (which they must give within twenty days, otherwise the penalties of *præmunire* are incurred) the Home Secretary submits to the King a warrant for the issue of letters patent approving of the election. This procedure applies to the old sees: for the newer sees, where there may be no electing body, the appointment is made directly by the Crown, and the only warrant is that for the issue of the letters patent containing the appointment. In either case the bishop elect does homage to the King for his temporalities, being presented by the Home Secretary who reads the oath which the bishop kneeling before the King repeats. Then a further warrant has to be submitted for the issue of letters patent for the restitution of the temporalities.

The foregoing are part only of the formalities and ceremonies which attend the appointment of a bishop. They stand in striking contrast to the simplicity of the ancient method of handing over the pastoral staff and ring to the new bishop, and even to the Secretary of State's own appointment which is completed in five seconds by the King's placing three seals in his hands. The formalities for the episcopal appointment are prescribed in detail by a statute of Henry the Eighth, and are evidence of that monarch's determination while retaining the old form of election to dictate absolutely the person to be elected.

The Home Secretary has also to submit warrants in connection with the appointment of suffragan bishops and with the pensions of retiring bishops. Diocesan officers are required by statute to make returns of fees and certain reports to him. The Ecclesiastical Commissioners make their annual report to the Home Secretary and he has various powers in connection with their administration.

IV. A large number of *appointments* to High Offices come within the Royal Prerogative. Some of them are made by letters patent, such as the bishops already mentioned, the Judges of the High Court, etc. and others by warrant under the sign manual. Where an appointment is made by letters patent, the issue of the letters patent must be authorised by warrant under the sign manual. In both cases, unless the duty is assigned specifically to some other department, the warrant is submitted to the King by the Home Secretary and countersigned by him: but, except for appointments coming within his own department, such as Prison Commissioners, Metropolitan and Stipendiary Magistrates, and Recorders, the Home Secretary's action is little more than ministerial.

When a new ministry is formed some of the more important appointments pass in this way through the Home Office, such as the warrants for the letters patent which provide for the offices of Lord Treasurer and Lord High Admiral being placed in Commission and the Boards of the Treasury and the Admiralty constituted.

Another class of appointment, now always made

under the sign manual is that of temporary commissions to inquire and report on specific subjects. The important part played by committees in the working of the British constitution has been a matter of frequent comment from Francis Bacon* down to the Japanese savant who regarded the doctrine of the Trinity as characteristically British. Nearly every important measure of reform has been preceded by an inquiry by a Royal Commission or a Parliamentary or departmental committee, sometimes by several such inquiries. Of the various forms of committees whether appointed by the Crown, by Parliament, or by individual ministers, the most dignified is that which is appointed and authorised to act by Royal Commission, though, if it is necessary to give it compulsory powers to take evidence on oath and to enforce the attendance of witnesses and the production of papers, it is necessary to have resort either to a special Act of Parliament or to the procedure recently provided by the Tribunals of Inquiry (Evidence) Act of 1921.

When the appointment of a Royal Commission has been decided on and its personnel settled, the Home Office submits to the King for his signature the warrant naming the commissioners and prescribing the terms of reference. The Royal Commission sends its report when completed to the Home Secretary who submits it to the King and afterwards presents it to Parliament.

* Bacon makes some apposite remarks on the subject of Committees: for instance "In choice of Committees, for ripening Businesse, it is better to choose Indifferent persons, than to make an Indifferancy, by putting in those that are strong on both sides."

Royal Commissions frequently consult the Home Office on questions as to their powers and procedure. The chief authority on these points is the report of the Home Office Committee of 1910 on the Procedure of Royal Commissions presided over by Lord Balfour of Burleigh.

v. There are a few minor matters of prerogative in which the Home Secretary takes part. Any one who wishes to assume the *arms* of another family, to use a *foreign title* in this country, or to have a hereditary right to *supporters* must apply for a royal licence to do so. The two latter privileges are very rarely given; but it is not uncommon for a will to require the beneficiary to take the testator's arms, and applications for this purpose are granted in proper cases. It is the duty of the Home Secretary to submit petitions on these subjects to the King and to advise him as to the reply. Application is sometimes made for a royal licence for *change of name*, but, as names can be changed equally well by deed poll or by advertisement, the licence is given only in exceptional circumstances, as for instance when the change affects a title of honour.

Questions regarding the *diplomatic privileges* enjoyed by foreign ambassadors and ministers and their households arise from time to time and have to be settled by the Home Office in consultation with the Foreign Office. The *Exequatur* to a foreign consul in this country —that is the document which sanctions his appointment and secures his consular privileges and immunities—is issued by the Foreign

Office, but the Home Office is always consulted as to whether the person nominated is a proper person to be recognised as consul.

There are some other matters, hardly of the nature of prerogative, in which the Home Secretary acts simply as the King's Secretary. Thus he notifies to various high officers and in particular to the Lord Mayor of London, various important events, such as the declaration of War, the signing of Peace Treaties, and births and deaths in the Royal Family. The birth of an heir to the throne in particular involves various special duties. Warrants for such purposes as the King's consent to marriages in the Royal family, and the grant of the titles Princess Royal and Royal Highness, are submitted for signature to the King by the Home Secretary but do not require his counter-signature. The warrants for royal marriages, after the King has declared his consent in Council, are entered in the books of the Council and the originals are sent to be preserved in the Home Office.

Chapter IV

THE KING'S PEACE

THE keeping of the King's Peace is "a Royal Prerogative as old as the monarchy itself,"* and while a primary responsibility for peace and order in each district rests with the Magistrates and the Police authorities, the ultimate responsibility falls on the King's Ministers and particularly on the Home Secretary who in this matter exercises a general controlling and co-ordinating authority over the whole country.

Every citizen has a legal duty to aid in keeping the peace. The common law on this point is stated in the preamble to an act of Henry the Seventh—"all subjects are bound to serve the King in war against every rebellion power and might raised against him"†: and this obligation applies not only to civil war or invasion but to all violations of the King's Peace by riot and disorder. As Lord Haldane put it "every citizen is bound to come to the assistance of the civil authority when the civil authority requires his assistance to enforce law and order."‡

* Stephen, *History of the Criminal Law*, I, 185. "The King's Peace," he says, "is the legal name of the normal state of society." Murder and other crimes are punishable on indictment as offences against the King's Peace.

† 11 Henry VII, c.1.

‡ Evidence given before the Select Committee on the Employment of Military, 1908: 103.

Such a general obligation is however of little value unless the citizens who act on it have some organization and training or at least include a nucleus of trained men, and of no value unless the action to be taken is controlled by responsible authority. This was strikingly illustrated by what happened in the Lord George Gordon riots of 1780. There were then no organized Police, and the Magistrates were afraid to act because twelve years before Mr. Gilham, a Surrey Magistrate, who had quite justifiably ordered the troops to fire on rioters in St. George's Fields had been put on trial for his life: and though in 1780 soldiers were called out, their officers imagined they could not take action without a request from the Magistrates. So the soldiers stood by and did nothing while houses were plundered and set on fire, the prisons burned down and the criminals set free. A riot which could easily have been suppressed at the outset, was allowed to grow until for several days London was practically under the control of the mob: and finally the Government, or rather the King himself, had to treat the outbreak as an insurrection and to put the troops in motion without troubling about the Magistrates. The troops had to fire on the rioters, and before order was restored some hundreds were killed.

The position is altered now. The Magistrates understand their duties better, and there are Chief Officers of Police who take the heaviest part of the responsibility. The latter have at their command the regular police who are organized and highly trained, and special constables who, though

not highly trained, can be brought into the police organization and work along with the trained men. If the civil force is insufficient, military aid can be obtained from soldiers who are themselves citizens, trained, disciplined and armed.

To understand the respective functions of these bodies, it is necessary to sketch briefly their history.

In ancient times, apart from the feudal barons (who, if frequently themselves the source of disorder, no doubt usually maintained the peace by drastic measures within their own domains), the civil authorities charged with maintaining the peace were the "Conservators of the Peace," including certain great officers (the Chancellor, the Constable, the Marshal, the Steward) and the Justices of the King's Bench: in the counties the Sheriffs and Coroners: and locally Constables of all descriptions (parish constables, headboroughs, tithing men and borsholders) and certain local Conservators elected by the freeholders. The great officers, in London or following the court, could do little except when disorder had become rebellion: the constables were not organized nor efficient: and by the time the sheriff or the coroner had called out the *posse comitatus*, the power of the county, the mischief had usually been done.

When it became necessary to establish a more effective organization, it was based on the elected conservators of the peace, but the new officers were chosen by the King not by the freeholders. An Act passed in 1327, the first year of Edward III, provided for the appointment of Justices of the Peace though that name was not given till later:

"For the better keeping and maintenance of the peace" the Act said "the King wills that in every county good men and lawful, which be no maintainers of evil or barretors in the county, shall be assigned," that is, assigned by the King's commission, "to keep the peace." These new officers were soon given judicial powers—power to commit for trial in 1344, and power to try offenders and inflict reasonable punishment in 1360: but their original and most important function was to be responsible for the maintenance of the peace in each county, and this function they have fulfilled with a large measure of success for nearly six centuries and still retain. Their appointment marked a great advance towards a settled and orderly society.

The Justices of the Peace soon replaced in practice the old conservators, and the constables became their servants and took their orders from them. The constables however had only a limited local jurisdiction: they had no pay or very poor pay: they often took office under compulsion: many were drunken or of bad character: and though their efficiency varied at different times and in different places, they were on the whole an unsatisfactory body and failed to play what we should now regard as their proper part in the maintenance of order. Hence arose the practice of the Justices appointing "special constables" for special duties: a special constable, for instance, for the arrest of an important criminal who was likely to elude the ordinary parish constable: or, when there was serious disorder, special constables for the keeping of the peace. This last became a usual measure

and was regulated by a series of acts of Parliament ending with the Act of 1831, which is still in force. The special constables did good service in the days when regular police forces did not exist or were in their infancy. The most noted instance of their employment was at the monster Chartist demonstration of 1848, when it is said* 170,000 special constables (among them Louis Napoleon afterwards Emperor of the French) held the London streets: but with the growth of the regular police forces their importance seemed to be on the decline until the widespread industrial disputes of recent years and the emergencies arising from the War overtaxed the strength of the police forces, and the Home Office found it desirable to encourage the employment of special constables, and to provide by legislation for their being put on a more or less permanent footing.

Meantime the regular police had superseded the old parish constables and provided a new and far more effective instrument for the maintenance of order. In some towns an improvement was effected late in the eighteenth or early in the nineteenth century by the appointment of watchmen under Local Improvement Acts. In 1829 the Metropolitan Police Force was established: the creation of Borough forces was made compulsory by the Municipal Corporations Act of 1835: and County forces were gradually established until the Act of 1856 required every county to provide its own constabulary. The Chief Officers in all the larger forces were men of experience and standing,

* Walpole, *History of England*, IV, 336: *Ann. Reg.* 1848, 52.

and were able in practice to relieve the Justices of the Peace of duties which were becoming too onerous for them.

But both before and after the creation of the regular police forces, disorders had from time to time arisen which the civil authorities were unable to control, and it had been necessary for them to call for military aid: and in supplying this military aid, the central government took a direct part in the suppression of local disorder. When a standing army first came into existence, in the time of Charles II, Parliament took good care not to relieve soldiers from the ordinary obligations and liabilities of citizens: and during the eighteenth century Law Officers' opinions, afterwards confirmed by decisions of the courts, made it clear that in this matter a soldier's legal duties and liabilities are exactly the same as a civilian's. If there were a riot, the Magistrate could call on every one in his jurisdiction to aid in its suppression: and soldiers within the Magistrate's jurisdiction were bound to obey in the same way as other citizens. But if they were not in the Magistrate's jurisdiction and had to be moved there from another place, or if being within his jurisdiction they were called out not as individuals but as a military organization with lethal weapons, then they came under the orders of the Crown and could only be moved as a military force by permission of the Crown. So that in the eighteenth century, when Magistrates required military aid, they petitioned the Crown, and if military aid was given it was sent by the authority of the Secretary of State. The first

recorded case was in 1722 when a petition was received from the Mayor and Justices of Taunton for the assistance of troops, and the Secretary of State after consulting the Attorney General gave instructions for them to be sent. Between this date and 1766 many such petitions were received, and if the request was granted a special order was sent in each case to a particular officer to send troops if the Magistrates applied to him. In the days of slow communication this procedure meant great delay, and if the soldiers came at all, they were likely to come too late: and in 1766, on the occasion of extensive bread riots in the West of England, a circular was sent to 20 commanding officers of regiments authorising them to aid and assist civil Magistrates in their respective neighbourhoods if they should apply to them on occasion of riots or disturbances. This arrangement was found to be convenient and the orders were continued and made general: and thus the practice was authorised by which Magistrates requisitioned troops from the nearest military station without any previous application to the central government. These general orders, though frequently amended in detail, still remain in force and are embodied in the King's Regulations for the army.*

It is clear from this that it is a mistake to suppose that Justices can of legal right claim the aid of soldiers from any military station. If there is serious disturbance or well founded apprehension of serious disturbance, they can as of right requisition the assistance of soldiers actually within their

* King's Regulations for the Army, 955-975.

jurisdiction, though even then the officer in command may refuse if he is satisfied that the call has been made on insufficient grounds. If the soldiers are outside the Magistrates' jurisdiction their aid, if granted, is granted not as of right, but in pursuance of the arrangements made with the consent of the Home Secretary by the military authorities. Nor on the other hand is there any ground for the suggestion which has sometimes been made that troops can be moved into a disturbed district only if the Magistrates call for them: the Secretary of State can authorise the movement of troops to any part of the kingdom at any time: and when there are great and widespread outbreaks of disturbance, the proper disposition of troops is a matter for the central government acting through the military authorities. It cannot be left to the disconnected and possibly conflicting demands of a large number of local authorities, some unduly alarmed, others possibly lethargic.

When disturbances are threatened it is essential that there should be the closest co-operation of Magistrates with Police, of Police with Special Constables, and of both Magistrates and Police with the military authorities: and it is one of the functions of the Home Office to endeavour to secure this co-operation, and in particular to stimulate the energies of the civil authority and prevent unnecessary appeals for military aid. This is not a new task. In the troubled times which preceded the repeal of the corn laws we find Sir James Graham as Home Secretary constantly engaged on the

problem of keeping order and repressing violence and in daily communication with the civil authorities throughout the country. "It is no easy task," he wrote in July 1842, "to govern this country, and it is rendered far more difficult because the daily labour is such as one can neither read the newspapers nor see a friend nor write a letter."*

In recent years though there is a stronger and better trained police than he had and better means of communication, the work of co-ordination and guidance has not become simpler, and the Home Office has endeavoured to deal with the problem, as Graham's biographer expresses it, "by way of foresight and prevention." For this purpose the Home Office has from time to time supplied advice and instructions to Magistrates and Police: and the orders and circulars issued since 1909 now cover practically the whole ground.

As precautionary measures, it is the duty of the Chief Constable and the Police Authority to maintain so far as possible a force of special constables or lists of persons who, when occasion requires, will act as special constables: to concert arrangements with other police forces for mutual aid as provided in the Police Acts: to keep in touch with the military authorities and know precisely where to apply if military aid is required, and to report at once and fully to the Home Secretary if disturbances are anticipated. In each Petty Sessional Division a rota should be kept of the particular Justices who are to act if disturbances

* Parker, *Life and Letters of Sir James Graham*, I, 323: see also pages 319-326.

absolutely necessary to prevent serious crime and of exercising all care and skill with regard to what is done."* It may be that his only course is to order his troops to fire: but sometimes mounted troops have dispersed rioters by using the flats of their swords, and sometimes (as at Chesterfield in 1911) an advance with bayonets has been effective without inflicting any serious injury except such slight wounds as might be caused by gentle pressure with the bayonet from behind. In a good many cases the mere presence of troops has checked the disturbance: and sometimes as in a "Pro-Boer" riot at Scarborough in 1900 the mob have cheered the soldiers.

All the arrangements mentioned above may be short circuited in case of extreme emergency. It is lawful for the military, and indeed their duty, to intervene without a requisition if it is clear that life and property are in imminent danger from a riot which can be checked only by military action. "No officer is justified by English law in standing by and allowing felonious outrage to be committed merely because of a magistrate's absence."† On the other hand, the officer may refuse to intervene on a requisition if he has substantial ground for thinking military action is unnecessary. At Winchester in 1908 the officer commanding the troops, when he found that he had been summoned by the Mayor in an unnecessary panic, withdrew his men, and this action was approved by the Home Office and the War Office.

* Ibid. p. 10.

† Ibid. p. 10.

So far as possible all the details for dealing with disturbance, and especially for co-operation with the military authorities, have been worked out beforehand: but when disturbances occur or are apprehended over the whole country the work of the Home Office and the responsibility of its chief are very great. The emergency arrangements for the rapid receiving and despatch of intelligence and orders are put in operation, and reports pour in from Chief Constables, many of whom also consult the Home Office before deciding to call for military aid. Difficult legal questions often arise suddenly, as when Lord Haldane, acting temporarily for the Home Secretary, forbade the unloading of a ship at Newport because of the certainty that it would lead to a riot which the Police force was too small to cope with. The Law Officers held that in an extreme emergency it was right to forbid the immediate exercise of a legal right if its exercise was provocative of riot and the circumstances of the moment were such that no force was available to prevent violence.*

After a riot is over, persons who have suffered damage to their property at the hands of the rioters have a legal right to compensation from the local police authority. The claims for such compensation have to be made and dealt with in accordance with rules made by the Home Secretary under the Riot (Damages) Act of 1886, an act passed after the Trafalgar Square riots to revive and make effective an old statutory right.

* *Cf.* Dicey, *Law of the Constitution*, 7th Ed. p. 276, and the cases there quoted.

In normal and quiet times the maintenance of order brings comparatively little work to the Home Office: but during a widespread industrial disturbance, attended by actual or possible outbreaks of violence and the paralysis of the ordinary means of communication and transport, the staff of the department experience fully "the joy of eventful life," and the office hours cover night as well as day. On the Home Secretary there falls, not only the burden of grave administrative decisions, but the duty of carrying with him his colleagues in the Cabinet and of defending his action if it be questioned in Parliament.

Chapter V

THE PREROGATIVE OF MERCY

THE King's Prerogative of pardoning offenders is exercised on the advice of the Home Secretary, and the duty of advising in this matter, especially in relation to death sentences, is the most difficult and exacting of all his responsibilities.

Pardons under the prerogative are of three sorts—Free Pardons, Conditional Pardons and Remissions.

A *Free Pardon* wipes out not only the sentence, but the conviction and all its consequences, and from the time it is granted leaves the person pardoned in exactly the same position as if he had never been convicted.

A *Conditional Pardon* or *Commutation* substitutes one form of punishment for another, as for instance penal servitude for death, or imprisonment for penal servitude. As a general rule it takes effect only with the consent, express or implied, of the person pardoned, and can therefore only substitute a milder for a severer punishment. By statute however, when a capital sentence is commuted to transportation or imprisonment or penal servitude, and the King's pleasure has been communicated to the Court by the Secretary of State, the Court issues an order for transportation,* imprisonment

* The Transportation Act, 1824, Sec. 2: the Transportation Act, 1830, Sec. 7: the Penal Servitude Act, 1853, Sec. 5.

or penal servitude as if this had been its original sentence.

A *Remission* reduces the amount of a sentence without changing its character, as when a sentence of six months is reduced to four by the remission of two months, or a fine of £20 reduced to £5 by the remission of £15.

Formerly, if a Pardon were to be given full legal effect, it had to be passed under the Great Seal; and every pardon issued by the Home Office used to contain a direction that it should be included in the next "general pardon" for the circuit: but the Criminal Law Act, 1827, Section 13, provided that where a convicted person received a Free or Conditional Pardon by warrant under the Royal Sign Manual countersigned by the Secretary of State, it should, on his discharge from prison under a Free Pardon, or on the performance of the conditions of a Conditional Pardon, have the effect of a Pardon granted under the Great Seal.

A *Reprieve* or *respite* is an exercise of the prerogative to postpone the carrying out of a sentence either for a fixed time or "until further order." This does not require the Royal Sign Manual: the Secretary of State signifies the King's pleasure by an order under his own hand. When it is decided to commute a capital sentence to penal servitude, a respite "until further order" is at once issued to the Sheriff charged with the execution of the sentence: and the Conditional Pardon is subsequently prepared, submitted for the King's signature, countersigned and sent to the Clerk of

Assize with a view to the Court's making an order for the prisoner to be held in penal servitude.

The power of the King to pardon, which arose from the fact that criminal prosecutions are taken in his name, extends only to crimes and has no effect on civil procedure. Thus it applies to a definite punitive sentence for contempt of court, but not to a case where the contempt consists in refusing to obey an order of court and the prisoner can himself purge his contempt and obtain his release by obeying the order. It used to be held that the power to pardon did not extend to the remission of a fine payable to some party other than the Crown: but by an Act of 1859 the King's power to pardon was extended to all fines. Proceedings for non-payment of rates and of bastardy arrears are on the doubtful margin between criminal and civil proceedings, and while the Crown cannot remit the liability to pay, actual imprisonment for non-payment has sometimes been remitted—when for instance the prisoner was in a critical state of health. The King has power to pardon offences before as well as after the offender's conviction, and a Pardon granted before or during a prosecution is a bar to further proceedings; but the constitutional mode of stopping a prosecution is the entry of a *nolle prosequi* by the Attorney General: and the prerogative of pardon is never now applied before conviction except in extremely rare cases where a pardon is considered necessary in order to enable an important witness to give evidence without incriminating himself on some minor charge. In such a case there would have

to be a Pardon under the Great Seal, as the statute which gives full legal effect to pardons under the Sign Manual applies only where there is a conviction. In case of impeachment (if such a procedure should ever again be adopted) a pardon granted before sentence would be ineffective*: if granted after sentence, it must be under the Great Seal.

Until 1908 English law provided, save in a few exceptional cases, no means of reviewing judicially the judgment of a criminal court, and, if evidence came to light which showed that the verdict of a jury or the sentence of the judge was wrong, the only way of rectifying the injustice was by the grant of a Free Pardon. Hence the Home Office was forced into the position of a final court of appeal in criminal cases, and had from time to time to review the whole of the evidence in the most difficult cases, and to arrive at a decision on the question whether the law should take its course or the alleged offender should receive either a Free Pardon, which in this case amounted to a declaration of his complete innocence, or a Conditional Pardon, which mitigated the penalty substituting for instance penal servitude for capital punishment. The Home Office possessed none of the ordinary powers of a court of law for this purpose—evidence could not be taken on oath, and witnesses could not be cross-examined: and this disadvantage was only partially balanced by the circumstance that, not being bound by the technical rules of evidence, the Home

* The Act of Settlement, 1700.

Secretary could obtain knowledge of facts which necessarily remained unknown to the court. The chief disadvantage however was that, there being no public hearing, no one knew what evidence was received or why alleged evidence was rejected: and any decision at which the Home Secretary might arrive was liable to be made the subject of violent attacks in the press and in Parliament. In the famous case of Lipski, when the Home Secretary, Mr. Matthews, after days spent in anxious examination of evidence, decided to let the law take its course, a storm of protest was raised which would almost certainly have driven him from office had not Lipski on the eve of his execution confessed to the murder.

Happily by the passing of the Criminal Appeal Act of 1907 the Home Secretary was once for all relieved of a responsibility which ought not to have belonged to him. The establishment of a Court of Criminal Appeal had for many years been advocated by legal reformers and by more than one Home Secretary—Sir William Harcourt towards the end of his term of office had in consultation with Sir Henry James prepared a bill for the purpose, and afterwards a private member's bill was introduced annually in the House of Commons—but the subject did not excite much interest so long as it was felt that practical justice was being done. The passing of the Act of 1907 was due mainly to the public interest aroused by the Beck case. In that case the Home Office, relying on Beck's identification by no less than ten independent witnesses as well as by the evidence of the first

expert in handwriting, failed, as the court had failed, to follow up a clue which would have established Beck's innocence, and he underwent seven years penal servitude for a crime of which he was innocent. Whether a Court of Criminal Appeal would have done better may be doubted. In a later case, where a prisoner's guilt appeared to be established by his identification by several independent witnesses who actually saw the offence committed, that Court rejected his appeal, though it was afterwards induced to alter its decision when the confession of a party to the crime and inquiries made by the Home Office established the prisoner's innocence. Beck's case however indicated clearly the defective condition of the law, and a court of appeal was established which, if its powers are exercised fully, can correct any wrongful conviction by Assizes or Quarter Sessions. By the Criminal Justice Administration Act of 1914 all convictions by Courts of Summary Jurisdiction are subject to appeal to Quarter Sessions.

Since the passing of the Act of 1907, there is an appeal to the court in almost every conviction of murder, and in many other criminal cases, and in such cases the decision whether a convicted person is guilty or innocent no longer rests with the Home Secretary. Nevertheless from time to time cases still come before him of wrongful conviction in which the prisoner is too poor or friendless or too lacking in intelligence to be able to establish his innocence: and, if on investigation *prima facie* evidence of a miscarriage of justice is found, the Home Secretary can bring the case

before the Court by a reference under Section 19 of the Act. Such investigations and references have corrected not a few errors of justice, as in the case of Rose Emma Gooding who was twice convicted of sending obscene letters and her appeals on each occasion dismissed, but whose innocence was established and whose convictions were finally quashed by the Court on a reference by the Home Secretary.

An even more striking case of miscarriage of justice requiring the intervention of the Home Office occurred some ten years ago. A respectable woman was accused by a neighbour of sending threatening letters, was convicted, was sentenced to six months' imprisonment, and her application to the Court of Appeal was rejected. On her release she was accused of another offence of the same sort and again convicted, and, though on this occasion the conviction was quashed on technical grounds, the Court directed her trial on another charge which resulted in another sentence of twelve months which she served in full. When on her release a fourth charge was brought against her, doubts were at last aroused, the matter was investigated carefully by the local police and special constables and brought to the notice of the Home Office, with the result that the prosecutrix in the former cases who had herself written the threatening letters had now to appear in the dock and to endure a long sentence of imprisonment, while her victim received a Free Pardon and a substantial grant of money as compensation—inadequate compensation—for the sufferings she had undergone.

In this case resort was had to the former use

of the Free Pardon as a mode of declaring the innocence of the person to whom it is granted: and there are other cases, though of rare occurrence, in which this has still to be done. If for instance the innocence of a person who has been summarily convicted is established after the time for giving notice of appeal has expired, the only remedy would be the grant of a Free Pardon.

Though the use of the King's Pardon for the purpose of reversing a wrongful conviction is now rarely necessary, the exercise of the Prerogative of Mercy in its proper sense still remains one of the most important of the Home Secretary's functions. In particular it is his duty to decide in every case of murder whether the capital sentence should be carried out. For other offences the Judge has power to mitigate the penalty to meet extenuating circumstances: but in the case of the gravest of all crimes the law gives him no choice and he has to pronounce the capital sentence, leaving it to the Home Secretary to take into account any recommendation of the jury to mercy or any circumstances which may appear to mitigate the gravity of the crime. The advantage of this arrangement is that it relieves the individual Judge from the painful duty of deciding, in the few minutes between verdict and judgment, and possibly in the absence of full information as to the prisoner's history, character and motives, the question of life or death, and leaves that question to an authority who can, and does, make the fullest inquiry as to the character, history, motives, and mental condition of the offender, and who decides after review of the

previous decisions in all similar cases. The Home Secretary may even properly take into account popular feeling in the matter and intervene in a case in which the execution of the death sentence would do more harm than good by the shock it would give to the great mass of the public. Lord Gladstone summed up the experience of his predecessors in the following reply given in the House of Commons:

"It would be neither desirable nor possible to lay down hard and fast rules as to the exercise of the prerogative of mercy. Numerous considerations —the motive, the degree of premeditation or deliberation, the amount of provocation, the state of mind of the prisoner, his physical condition, his character and antecedents, the recommendation or absence of recommendation from the jury, and many others—have to be taken into account in every case: and the decision depends on a full review of a complex combination of circumstances, and often on the careful balancing of conflicting considerations. As Sir William Harcourt said in this House 'The exercise of the prerogative of mercy does not depend on principles of strict law or justice, still less does it depend on sentiment in any way. It is a question of policy and judgment in each case, and in my opinion a capital execution which in its circumstances creates horror and compassion for the culprit rather than a sense of indignation at his crime is a great evil.' There are, it is true, important principles which I and my advisers have constantly to bear in mind; but an attempt to reduce these principles to formulæ and to exclude

all considerations which are incapable of being formulated in precise terms, would not, I believe, aid any Home Secretary in the difficult questions which he has to decide."*

When any prisoner is sentenced to death, this is immediately reported to the Home Office by the Governor of the prison, and the Judge also writes to the Home Secretary, forwarding a copy of his notes of the evidence and reporting any recommendation of the jury. The Judge sometimes states at once his own opinion on the case, but more frequently he waits before expressing his views until the prisoner's appeal has been heard or the Home Secretary has asked for them. In most cases petitions are received from the prisoner's solicitor or his friends, and in any case which has excited much public attention, whatever its merits, petitions from the public pour in in large numbers: but whether there are any petitions or not, minute inquiries are made through the police and otherwise into the prisoner's history and character and into all circumstances which may throw light on the motive of the murder and on any uncertain features in the crime. If the case is one in which it is obvious that the capital sentence ought not to be carried out, a decision is reached and the prisoner is informed as soon as his appeal to the Court has been heard and decided—occasionally even, as in cases of infanticide, before there is an appeal: but in most cases the Home Secretary's final decision is not announced until three days before the date fixed for the execution.

* Parliamentary Debates, Vol. 172, 11th April, 1907, 366.

Though generally speaking the question whether the law should or should not be allowed to take its course depends, as already explained, on so many varied considerations that no general principle can be formulated, there are certain classes of cases in which something approaching to a rule can be laid down.

It has for instance been held for many years that the life of a person under the age of eighteen should be spared. Above that age youth is one of the considerations to which weight is given, but which is not by itself conclusive in the case of a cold blooded and cruel murder.

No woman has been hanged for infanticide since the year 1849. The sentence in such cases is reduced in the first instance to penal servitude for life, and its further reduction depends in part on the reports received from the Governor, Medical Officer, and Chaplain of the prison. In recent years, no woman who has killed her infant child in circumstances of destitution or distress has been kept in penal servitude for more than three years, and in several cases the term has been only one year. On the other hand, the murder of infants by baby farmers has always been punished with just severity, and it would be at least an open question in any future case of wholesale murder of infants whether the capital sentence should not be carried out.

Cases of constructive murder, that is, of murder in the course of committing a felony, present special difficulties. The examples of this which are given in legal text books, such as that of a man feloniously

shooting at a hen and accidently killing a man, do not occur. If they did they would no doubt be dealt with as if the crime were manslaughter: but there have been cases where arson has been committed with such a ruthless disregard of the lives of innocent persons that the crime could not be excused on the plea that there was no intention to kill: and some of the most horrible murders in the annals of crime have been committed in the perpetration of rape.

When death is caused by an illegal operation intended to produce abortion, the crime is technically murder, and the former practice was to commute to penal servitude for life, and, in the absence of specially aggravating circumstances, to release after 12 years. In such cases however judges now generally allow juries to find a verdict of manslaughter, and in the event of a conviction of murder the Home Secretary would probably be guided in his decision by the sentence now usually imposed by the judges when the conviction is for manslaughter.

When two persons agree together to commit suicide and one dies while the other lives, the survivor is technically guilty of murder. In such cases the capital sentence is not carried out: and sometimes a short term of imprisonment is all the penalty exacted, as in a case where an old man and his wife left solitary and in extreme poverty agreed to take poison together and the man's life was saved. Where however a man has induced a woman to agree to die with him and then out of cowardice has failed to carry out his share of the bargain (such cases

have occurred more than once), he is likely to have to serve a long term of penal servitude.

Provocation sometimes is, and sometimes is not, a sufficient reason for commutation of the capital sentence. In discussing a case where the provocation was adultery but the murder was carried out with long premeditation and in cold blood, Sir William Harcourt said "If a person under extreme provocation is so driven to despair that the mind may be regarded as temporarily unhinged and the ordinary restraints of the man's moral nature are relaxed, there is room for much compassion and a justification of leniency. But when there is evidence of settled purpose of revenge, deliberately planned and coolly carried out, it seems to me extremely unsafe to give way to such considerations." Many cases of provocation however lie between the two extremes indicated in this minute, and it usually happens that the decision will have to turn not only on the degree of provocation but also on considerations of age and character and other conditions.

Drunkenness is another element that has to be considered in many cases of murder. Lord Cross when Home Secretary held that he ought not to interfere in cases of drunkenness unless the effects of drink were such as to produce a condition of insanity in the legal sense: but other Home Secretaries have been disposed to adopt a more lenient view, and to act on the advice given in a capital case by Bovill C. J. who said in effect that, though voluntary drunkenness is in law no excuse for a crime, its existence in crimes other than murder is constantly taken into account by judges

when they consider that the crime was committed not through malice or any evil motive but at a time when the criminal was not in possession of his senses through drink: and that in his opinion the fact that a murder was committed under the influence of drink is proper matter for the consideration of the Secretary of State, even though the effects of drink may fall short of insanity in the legal sense. On the other hand if there be a purpose of revenge or other evil motive, the fact that the murderer was drunk is not by itself sufficient ground for interference.

Great weight is always given by the Home Secretary to a recommendation by a jury if some sufficient reason be given for it. A mere recommendation without any reason carries much less weight, and sometimes there may be ground for suspecting that it has merely been added to satisfy the scruples of a juror who objects to capital punishment. The cases are very few where the Home Secretary has felt unable to give effect to a recommendation to mercy made by the jury on some reasonable ground and concurred in by the judge. Lord Palmerston in deciding on commutation in the case of a man who had murdered a girl of twelve said "My own opinion is that he ought to suffer the penalty which the law attaches to murder . . . but after the recommendation of the Judge and the Jury and the intercession of the Magistrates and other persons, it would on the whole not be to the public advantage that the sentence should be carried into execution."

A peculiarly difficult question arises in those

cases where the mental condition of the prisoner is in doubt. A large number of persons accused of murder are found insane by the jury and ordered to be detained during His Majesty's pleasure, and these are in ordinary course removed to Broadmoor. But there are a certain number of borderline cases in which the question whether prisoner is insane, though negatived by the jury or not raised at the trial, has to be considered after conviction. If in such a case the Home Secretary has any *prima facie* ground for suspecting insanity—and not infrequently the question is raised by the judge who tried the prisoner—he acts under Section 2 of the Criminal Lunatics Act of 1884, and refers the question to two (or rarely three) medical experts. If they certify that the prisoner is insane, there is a consensus of legal authority for the view that it would be contrary to the common law to allow the execution, and the records which go back to 1840 show no exception to this rule: the prisoner is therefore respited, and removed to Broadmoor. Even when medical experts find him sane at the time of the inquiry, their report may indicate that at the time of the crime he was insane or in such an abnormal mental condition that the sentence is commuted to penal servitude for life, and the convict removed to Parkhurst Prison where cases of doubtful sanity are kept under special observation.

It might be a more merciful course to allow the execution of a criminal who is hopelessly insane than to keep him in an asylum for life with all the mental suffering that insanity entails, but the law does not permit this and probably public opinion

would be opposed to its alteration. There is no reason to think that, with the safeguards provided at the trial, in the Court of Criminal Appeal, and by the Home Office, any insane prisoner is ever allowed to go to execution. "We have no instance," Lord Justice Atkin's Committee* say, "brought before us by any witness personally acquainted with the facts in which a miscarriage of justice took place in the execution of the offender. Two or three cases were suggested tentatively but on investigation proved, in our opinion, unfounded. . . In our opinion to the insane person justice is done." In the twenty-two years from 1901 to 1922, out of 1,445 persons committed for trial on charges of murder, 585 were convicted and 517 were found to be insane, either before trial or by special verdict of the jury, and of those convicted 13 were found insane on the Home Office inquiry. Thus almost half of the total number of persons judicially dealt with as murderers were found to be insane.

It may be added that, though a considerable proportion of those sent to Broadmoor afterwards recover permanently or temporarily, the cases in which the patient's subsequent history throws any doubt on the correctness of the finding that he was insane at the time of the crime, are exceedingly few. The suggestion sometimes made that murderers can escape punishment by feigning insanity and on recovery obtain speedy release from Broadmoor is unfounded. Much more than a mere certificate of sanity is required before a person who has committed murder and has been ordered to

* Committee on Insanity and Crime, 1923, Cmd 2005, p. 20.

be detained "during His Majesty's pleasure" can be turned loose again on society. It has sometimes happened that a convict serving a sentence of penal servitude has obtained removal to Broadmoor by feigning insanity, but in such a case it is not long before his true state of mind is discovered and he is returned to prison to continue to serve his sentence.

In other than capital cases, though the petitions for the exercise of the prerogative of mercy produce a great mass of work—every prisoner is free to petition the King through the Home Secretary and thousands of petitions are received from prisoners and their friends—they give rise to comparatively few questions of serious difficulty. Compared with forty or even twenty years ago, the tendency of the courts to leniency in their sentences is very marked: and this tendency has been accentuated by the frequent reduction of sentences by the Court of Criminal Appeal. The introduction of the system of probation has also kept out of prison a large number of first offenders—the class in general most deserving of mitigation of punishment. In the year 1922, the last for which figures are available, there were 108 remissions of imprisonment, of which 32 were given on medical grounds and 35 in what is described as "simple mitigation of sentence," that is, cases where increased weight is given, sometimes at the judge's own suggestion, to such circumstances as youth, provocation or mental disturbance, or cases where circumstances arise which were not within the knowledge of the

court, as for instance where an opportunity occurs, if early release is given, of the prisoner's making a new start in life. There were also one or two remissions on account of a technical irregularity in the sentence (though that is not ordinarily a matter for the Home Secretary) and several as a reward for useful information given by the prisoner. In the same year 28 sentences of penal servitude were reduced by the grant of licences to be at large before the usual time, nearly all "in simple mitigation of sentence": six fines were remitted: and in 94 cases convicts released on licence were relieved of the requirement of reporting to the Police.

Chapter VI

THE ADMINISTRATION OF JUSTICE

Criminal Proceedings.

It is a fundamental principle of the constitution that the Executive cannot interfere with the exercise of the judicial powers of duly constituted Courts of Justice civil or criminal. The Home Secretary is therefore precluded from giving any direction to, or from attempting in any way to influence the decision of, a judge or magistrate in any case which is *sub judice.*

Further the Home Secretary has no power, except in the exercise of the prerogative of mercy, to interfere with any judicial decision or sentence. He cannot reverse an acquittal or the dismissal of a case, nor can he increase the severity of any sentence. All appeals to him on these points, whatever their merits, have to be rejected as beyond his powers.

Nevertheless there is a wide field in which he takes a part in the administration of criminal justice, so great that for some of its purposes he might be described as the Minister of Justice.

1. He has by custom or statute important functions with regard to the holding of courts and the appointment of certain judges and magistrates.

These do not extend to Courts of Assize which

are presided over by the Judges of the High Court and the arrangements for which are in the hands of the Lord Chancellor. Formerly changes in the places for holding assizes and the local extent of their jurisdiction were matters for the Home Secretary who, for instance, prepared the Orders in Council under the Spring and Autumn Assize Acts: but these functions were transferred many years ago to the Lord Chancellor, though the Home Secretary is still consulted on any important change in the assize arrangements and on the difficulties which arise from time to time.

Quarter Sessions on the other hand, so far as any government action is required, come within the Home Secretary's jurisdiction. The grants of separate courts of Quarter Sessions to Boroughs are made by Order of Council on his advice, and he appoints the Recorders who preside at these courts. He approves the schemes for the holding of Quarter Sessions in the County of London and appoints the Chairman and Deputy Chairman. The salaries of the Clerks of the Peace, who are the clerks to courts of Quarter Sessions, are fixed by him on the recommendation of local authorities, and he approves their Tables of Fees.

While Justices of the Peace are appointed on the advice of the Lord Chancellor or, in Lancashire, of the Chancellor of the Duchy, the London Police Magistrates and most Stipendiary Magistrates are appointed by the King on the Home Secretary's recommendation: and the grants of separate Commissions of the Peace to Boroughs are also made on his advice. All the arrangements for the

Metropolitan Police Courts are under his control, and all the officers of these courts hold their appointments from him.

Clerks to Justices elsewhere than in London are appointed by the Justices but their appointments have to be confirmed by the Home Secretary. He determines their salaries when any dispute as to the amount arises between the Justices and the local authorities. He formerly approved the tables of court fees: but these are now happily superseded except in London by the general table for all Courts of Summary Jurisdiction appended to the Criminal Justice Administration Act of 1914, the Home Secretary being given power to vary that table when variation is required on account of new duties or for other good reason. The rules for the procedure of Courts of Summary Jurisdiction are made by the Lord Chancellor, but are in fact always drafted in the Home Office. The Home Secretary makes regulations, under the Costs in Criminal Cases Act of 1908, as to the allowances to be given to prosecutors and to witnesses both for the prosecution and the defence in all criminal courts, and regulations as to the fees of solicitors and counsel under that Act and also under the Criminal Appeal Act of 1907. When a prisoner is required as a witness in any legal proceedings or for his prosecution on a further charge, the Home Secretary makes the order for his production in court.

11. The Home Secretary has important powers in directing *prosecutions*, some of them arising from the prerogative, others given by statute.

When the courts decided, as mentioned in Chapter II, that the Secretary of State had no inherent power of issuing warrants of arrest or search, they expressly stated that he could, on behalf of the King, order arrest and committal to prison for treason. In 1840 when a man named Oxford, who proved afterwards to be a lunatic, attempted to shoot Queen Victoria on Constitution Hill, he was examined and depositions taken in the Home Office before the Home Secretary, the Marquis of Normanby, and, after the accused had appeared before the Privy Council, he was committed on the Home Secretary's warrant to Newgate to await his trial for high treason. That was the last occasion on which the Home Secretary committed an offender to prison and it is not likely the power will ever again be exercised.

The Home Secretary has however always been the authority who, in consultation with the Law Officers of the Crown and the Director of Public Prosecutions, settles whether a prosecution in the nature of a political prosecution should be undertaken. On the legal aspects of the case and especially on the question whether the prosecution would succeed, the Home Secretary would almost always regard the opinion of the Law Officers as final: but the question of policy*—whether in the existing circumstances it will best serve the public

* This sentence stands as it was written in August, 1924, without reference to the Campbell case which later attracted so much attention. It did not then seem necessary to say that the decision to prosecute or not to prosecute, while it might be a question of policy in the sense indicated above, ought never to be influenced by party pressure.

interests to prosecute a man who has been guilty (for instance) of using seditious language, or to ignore the offence and avoid giving an advertisement to the offender—is one which the Home Secretary must either himself decide or, if the matter be of first importance, bring before the Prime Minister or the Cabinet. Sir William Harcourt for example after consulting the Cabinet directed the Attorney General to prosecute Johann Most for an article in the *Freiheit* in which he exulted over the recent murder of the Czar in such terms as amounted to an incitement to murder; and Mr. Churchill, after full consultation with the Law Officers and others, decided on the prosecution of Mylius for a libel on the King. Under the Territorial Waters Jurisdiction Act of 1878, the prosecution of an alien for an offence committed on a foreign ship, which might possibly involve a political question with a foreign power, cannot be instituted until it has been authorised by the grant of a certificate under the hand of the Home Secretary.

The Director of Public Prosecutions and his assistants are appointed by the Home Secretary, and the rules made by the Attorney General as to the Director's duties are subject to his approval jointly with the Lord Chancellor. These rules require the Director to prosecute in all cases of murder (an arrangement introduced by Sir William Harcourt) and in any other cases which the Home Secretary may direct him to undertake, as he has done for instance in cases arising under the Money-lenders Act of 1900. In ordinary course the Director initiates and carries on prosecutions either

on his own responsibility or by direction of the Attorney General, but his connection with the Home Office is a close one and many other matters arise, especially in capital cases, in which he comes to the Home Office for consultation or direction. He makes an annual return of his prosecutions to the Home Secretary for submission to Parliament.

In cases of a more ordinary character which do not require the Director's intervention but are left to the Police to proceed either summarily or by way of indictment, the Home Secretary sometimes gives general guidance to the police as to the prosecutions they should undertake: and instances might be given of test cases begun or carried to appeal at his request for the purpose of securing a decision on some doubtful point of law of general importance.

III. The Home Secretary is the recognised authority for supplying to criminal courts information of a general character relevant to the discharge of their duties.

So far as Judges, Recorders, and Chairmen of Quarter Sessions are concerned, circulars and memoranda of this character are few in number and are issued usually at the request of, or after consultation with, the Lord Chief Justice. The most important of them are explanations as to the way in which the sentences of the court are carried out, and deal with such matters as the classification and employment of prisoners, the statutory remission of sentences of imprisonment (a prisoner sentenced to more than a month can earn remission of one-sixth of

his sentence), the grant of licences (tickets of leave) to convicts, the rules as to forfeiture or revocation of such licences, and the mode in which effect is given to concurrent sentences differing in nature or length passed on a prisoner by the same or by different courts. Other matters on which information has been supplied are the Borstal System of dealing with young offenders, the preventive detention of habitual criminals, the emigration of criminals (the United States and the Dominions generally refuse to admit criminals released by the courts for the purpose of emigration), and the methods approved by the Court of Criminal Appeal for dealing with prisoners guilty of a series of offences in different jurisdictions.

The case is different with regard to Courts of Summary Jurisdiction. With much less judicial experience than judges, they have to deal with a wider range of subjects and a greater variety of cases. They have to enforce by proceedings which are technically criminal but not so in the ordinary sense, the vast mass of modern municipal regulations enacted to secure safety, health, and public amenities. The offences of children are left almost entirely to them, and they have to deal with mental defectives and with many cases of incipient insanity where the question whether punishment should be imposed or suspended hangs in the balance. It thus becomes necessary to furnish magistrates with information on many subjects—on the nature and purpose of new statutes, on the best modes of dealing with various classes of delinquent children, mental defectives, the physically unfit, etc. and not

infrequently it is desirable to supplement information with advice.

IV. Hence it follows that the Home Secretary is recognised as the authority who may supply magistrates not only with information but also with general advice as to the discharge of their duties. He never of course advises a bench (except in answer to inquiries in cases to be mentioned below) as to the decision to be taken in an individual case, but he can give them general advice as to the nature of the powers conferred on them and the objects for which these powers should be exercised. In answer to a member of parliament the Home Secretary on one occasion wrote "it has always been regarded as one of the regular functions of the Home Secretary to give general advice and guidance to Justices on the administration of the law and no one has hitherto raised any question of his right to do so." An example will show what is meant. In 1889 the Prison Commissioners reported to the Home Office that persons were from time to time brought to prison in a dying condition and wholly unfit for penal treatment of any kind, and instanced recent cases of a woman of 79, "infirm and exhausted" who died on the sixth day of a sentence of seven days, a man of 65 suffering from advanced heart disease who died a few minutes after reception, and a man of 35 who was received moribund from bronchitis and died the next day. The Home Secretary in a circular brought this report to the notice of justices, quoted instructions issued to

the police on the subject a few years before by Sir William Harcourt, and urged that "if Magistrates are careful to obtain medical evidence as to the condition of such prisoners, it will be possible to avoid altogether the committal of persons who are in a dying or exhausted condition and to reduce materially the number of cases in which persons are sent to prison wholly unfit for penal discipline." In the same circular he pointed out that during the past year "no less than 93 *sentenced* prisoners were found to be insane *on reception* and therefore clearly should not have been sentenced at all," and he urged on magistrates the duty of obtaining in all doubtful cases, evidence as to the mental condition of prisoners.

Another example of a different kind is the circular issued by Mr. Shortt in April, 1921, on the subject of Juvenile Courts. In this circular the Home Secretary, after restating the provisions of the Children Act of 1908 on this subject, expressed the opinion that in all large towns and populous places it was the duty of justices to hold the children's court in a building or room entirely separate from the ordinary police court, and in places where this was impossible, at a different hour from the ordinary sittings: to appoint a rota of specially qualified magistrates for the hearing of children's cases, and if possible to include among them women magistrates: to exclude from the court all persons not concerned in the case: to request press representatives not to publish the names of delinquent children: and to give the child any needed explanation of the proceedings in simple and non-technical

language. The circular further explained to the justices all the different modes of dealing with delinquent children and young persons provided by the law, urged that in all cases where the circumstances justified it release on probation should be tried, and advised magistrates who might have to deal with more serious offences to make personal acquaintance with the Reformatory and Industrial Schools to which children might be sent. It contained recommendations as to the medical examination of children who might be suffering from physical or mental defect, and as to the means to be taken to lessen the strain of giving evidence in the case of young girls called as witnesses in cases of indecency or immorality. The Clerk to the Justices was directed to forward a copy of the circular personally to every magistrate who ordinarily attended the court.

Similar circulars have been issued explaining and advising on many acts that affect the powers or procedure of Courts of Summary Jurisdiction, such as the Penal Servitude Act, 1891, the Children Act, 1908, the Motor Car Acts, the Mental Deficiency Act, 1913, and the Criminal Justice Administration Act, 1914: and there are series of circulars containing advice and directions on such subjects as the allowance of time for payment of fines, the remission of costs, the granting of bail to prisoners committed for trial, the proper classification of prisoners, the exercise of judicial discretion as against imprisonment on hard and fast lines, the modes of dealing with minor offenders otherwise than by imprisonment, and the right use of proba-

tion. In preparing such circulars the Home Office consults the Chief Magistrate at Bow Street who is the Home Secretary's adviser in all questions of law and practice relating to Courts of Summary Jurisdiction.

Two small volumes containing collections of these circulars were issued to Courts of Summary Jurisdiction in 1913 and 1919, and a reprint of the more important of them is supplied by the Home Office to any magistrate on application.

Such circulars as that with regard to Juvenile Courts naturally lead to magistrates occasionally seeking advice as to the mode of dealing with individual cases coming before them: and, so far as it is possible to do so without seeing the child and personally knowing the circumstances, the Home Office endeavours to assist them. In particular it has often assisted a court to find a school willing to accept a delinquent child who, on account of bodily or mental defect, had been refused by other schools. It also sometimes advises on questions of law arising under the Children Act or the Probation Act, though always with the express warning that "the Secretary of State has no power to decide doubtful questions of law." If any advice is given as to the sentence to be passed, it is in like manner qualified by pointing out that the sentence must be in the discretion of the Justices who have seen and heard the prisoner and the witnesses and are, or ought to be, fully acquainted with the circumstances.

On the other hand, the Home Office has had

to be on its guard against being treated as a general legal adviser to all the Courts of Summary Jurisdiction numbering 1060 in England and Wales, and generally a request for legal advice from a magistrate has to be answered to the effect that Courts of Summary Jurisdiction must rely on the Justices' clerk for guidance on legal questions.

Questions occasionally come before the Home Secretary as to the conduct of magistrates either in judicial proceedings or outside their judicial functions: and very rarely it has become necessary for him, after hearing all the magistrate has to say for himself, to administer a censure or rebuke. That it is within the Home Secretary's province to do this was shown in 1855 in the case of *Harrison v. Bush* (25 L.J.R., 25) where it was held that, a Justice of the Peace being appointed and removed by the Sovereign in the exercise of his prerogative, inquiry as to his conduct might properly be made by the Secretary of State. If however the matter is so serious as to raise a question of removing a justice, the Home Secretary reports the matter to the Lord Chancellor and leaves to him to decide whether the name of the justice should be struck out of the Commission of the Peace. Happily, though there are in England and Wales some thirty thousand magistrates, such cases occur only at intervals of years.

Extradition.

The Home Office is concerned in all extradition proceedings whether for the surrender of criminals

from abroad who have sought refuge in this country, or for the recovery of criminals who have escaped from the jurisdiction of the British Courts.

It is not necessary here to open up the doubtful question whether the King's prerogative extended to the extradition of foreign offenders found within the realm: the powers of the executive Government in this matter are now fixed and limited by the Extradition Acts of 1870 and 1873. Under these acts, no proceedings can be taken until an Extradition Treaty has been concluded with the foreign power concerned and brought into force by an Order in Council. The oldest extradition treaty still in force is that concluded with the United States of America in 1842, which was at that time brought into force by a special act of parliament, but which, supplemented by a later treaty, now comes within the ordinary extradition acts. Since 1870 treaties have been concluded and are now in force with thirty-eight foreign countries, ranging from France and Italy to Hayti and Liberia. The treaties with Germany and Austria were suspended during the war, but provision was made by the Peace Treaties for their revival: and now the German treaties, except those relating to her former colonies, and the Austrian Treaties are again in force. When the Government of a foreign country with which we have a treaty desires the extradition of a criminal, a diplomatic request for his arrest accompanied by the evidence on which the criminal charge is based or, if he is convicted, by evidence of his conviction and sentence, is made to the Foreign Office which at once forwards

it to the Home Office. The Home Secretary then issues an order to the Chief Magistrate at Bow Street, and the Chief Magistrate issues his warrant for the criminal's arrest which is carried out by the Metropolitan Police, acting, if necessary, in co-operation with the police of the district in which the criminal is sought.

This procedure however takes a good deal of time, and in cases where the criminal has to be searched for or is likely to elude arrest, it is necessary to short-circuit it. For this purpose the act provides for a warrant being issued on sworn information, and this is often done on the strength of a telegram from the police or judicial authorities of the foreign country, an order to proceed being made later by the Home Secretary when the diplomatic application and evidence are received.

The offender when arrested is brought before the Chief Magistrate who hears the case precisely as he would do in the case of a person charged in England with an indictable offence, with only the difference that he accepts written instead of oral evidence. If he is satisfied that there is a *prima facie* case he commits the offender to prison to await his surrender. Fifteen days then elapse during which the offender may apply to the High Court for a writ of Habeas Corpus for his release. A prisoner's surrender may be refused (a) because he is not identified as the criminal, (b) because the evidence is not sufficient to establish a *prima facie* case, (c) because the offence is not within the Treaty, and (d) because his offence is political or his surrender sought for a political object.

These are the points to be decided by the Magistrate, and the Magistrate's decision may be reviewed by the High Court on the application for Habeas Corpus. If there is no application, or if on the application the Court confirms the Magistrate's decision, the next step is for the Home Secretary to issue his warrant of surrender: and though it is still within his discretion to refuse to surrender for any sufficient reason, he would rarely or never go behind the Magistrate's findings or the Court's decision. If no new question arises his warrant of surrender goes forth and the police hand over the criminal to the agent of the foreign power.

The refusal to surrender for a political offence is a cardinal point in our extradition law, as it has been the traditional policy of the country that England should be a refuge for political offenders—a tradition so strongly held that when Lord Palmerston in 1858, after Orsini's attempt to murder the French Emperor, proposed a small measure to strengthen the English law against conspiracies to murder, he was defeated in the House of Commons and had to resign. This incident was well in the mind of the government when they provided in the Extradition Act of 1870 that all extradition treaties made by this country must expressly exclude the surrender of political offenders. In former times, and especially at the time of the Orsini case, this attitude gave rise with some reason to a suspicion on the part of foreign governments that England could be made the base, not merely of foreign revolutionary movements, but of plots to murder foreign sovereigns

and statesmen: but the trial and conviction of Most in 1881 for incitements to murder kings and rulers, and the decision of the High Court in 1891 in the Castioni extradition case that the term "political crime" does not cover murder or acts of violence unless they are "incidental to and form part of political disturbances," have shown that England is not a safe refuge for persons who commit or incite to ordinary crimes under the cover of political movements.

All applications for the arrest and return of British criminals who have escaped to foreign countries are made through the Home Office. If immediate arrest is required, the Home Office prepares instructions, which the Foreign Office sends by telegraph, to the British representative or to a consular officer to obtain provisional arrest. Such requests for arrest must always be made through the Home Office as direct applications for arrest made by the police have been found to cause difficulties and delays: but the police may apply direct for information as to a fugitive's whereabouts. When a notorious criminal like Whitaker Wright or Bevan gets away and it is not known where he has gone, it is often necessary to give a very wide circulation to information and sometimes to make several simultaneous applications for his arrest, and occasionally police officers, armed with introductions from the Home Office, are sent abroad in pursuit of the fugitive. Whether or not there is a previous application for provisional arrest, the evidence is collected and certified in the Home Office, and the formal application for surrender is

made by the Foreign Office on the Home Secretary's request. It is often a matter of difficulty to get the police and magistrates to supply substantial evidence drawn up in proper form, and the certification of the evidence to meet the requirements of foreign law, particularly the law of the United States, involves rather intricate questions.

The surrender of fugitive criminals to or by British Dominions and Colonies is governed by the Fugitive Offenders Act of 1881, and is similar to that for extradition, but the procedure is simpler and the difficulties fewer. All offences punishable with twelve months' hard labour are included and political offences are not excluded. In the case of colonial fugitives found in this country there is no diplomatic application, the case going directly before the magistrate; the right of application to the court for a writ of Habeas Corpus is the same; and the Home Secretary's only formal duty is the issue of the surrender warrant. Applications for surrender from the Colonies might be made direct by the Police or prosecutor, but it is found in practice best that all should go through the Home Office and the Colonial Office so as to ensure that the formalities and the requirements as to evidence are observed. Under other acts, the Home Office is empowered in certain circumstances to transfer a prisoner under sentence or a criminal lunatic from one part of the British Dominions to another: so that, for example, an Englishman sentenced to penal servitude in India may be brought home to serve his time in a convict prison in England.

No person who has committed a serious crime can find a safe asylum in any of the countries with which we have extradition treaties nor in any British possession: but it does not follow that even outside these limits he is beyond the reach of the law. The Fugitive Offenders Act has under the Foreign Jurisdiction Acts been extended by Order in Council to British Protectorates and to many foreign countries such as China and Persia in which there is jurisdiction over British subjects; and some foreign countries with which we have no treaty can be induced in a proper case to grant surrender even without the guarantee of reciprocity which is ensured by a treaty.

The Home Secretary, acting under powers given by the Extradition Act of 1870, frequently makes orders for the taking of evidence under "Commissions Rogatoires" issued by foreign criminal courts. In England criminal courts cannot, except in applications for extradition, receive the written evidence of persons residing abroad, but the law of many countries permits this, and when such evidence is required the judicial authority issues a "commission rogatoire" which reaches the Home Office through the diplomatic channel and which the Home Office forwards to a Court of Summary Jurisdiction with a Secretary of State's order for the taking of the evidence.

Coroners.

The Coroner's Court is a peculiarly English, and in some respects an anomalous, institution.

By a curious interchange, the Sheriff (*shire-reeve*) originally a local officer popularly elected, has become the authority for carrying into execution the judgments of the King's courts, while the Coroner or "Crowner," originally the officer for enforcing the King's rights, was for some centuries chosen by the vote of the freeholders, and is now appointed by the local authority: and his proceedings, though in substance police investigations as to the possible existence of crime or negligence, are conducted with a jury in open court on sworn evidence and more or less by judicial methods.

The Home Secretary possesses a rather vague general supervision over the work of the Coroners. The salaries of County Coroners in case of disagreement with the local authority are fixed by him. They make to him returns of their inquests and verdicts, and he from time to time issues circulars on points connected with their duties and procedure, as for instance on the special proceedings to be taken in case of deaths arising from industrial accidents in factories, mines, railways, etc. In cases of suspected murder or manslaughter by poisoning he assists them by lending the services of his expert toxicologists to make analysis and to give evidence. When a Coroner commits a prisoner on a charge of murder, he is required by the rules to supply the Director of Public Prosecutions with a copy of the depositions: and if the murderer is convicted the depositions are sent to the Home Secretary and sometimes aid him materially in the consideration of the case, as the Coroner, not being bound by the technical rules of evidence,

often takes statements which cannot be given in evidence at the trial but are material to the consideration of the motives of the crime and the degree of guilt of the criminal.

Civil Courts.

In the administration of justice by the Civil Courts the part taken by the Home Secretary is very small, and so far as the High Court and the County Courts are concerned, the Lord Chancellor is the sole Minister of Justice. Almost the only exception is the share the Home Office has had to take in making the arrangements for preparing the jury lists which under a recent act are now combined with the registers of electors and prepared by the Registration Officers.

The Home Secretary is however concerned with the specially constituted courts which conduct certain judicial inquiries of a civil nature. Thus he recommends to the King the appointment of two of the Railway and Canal Commissioners, one a lawyer, the other a person "of experience in railway business," and he approves their rules and procedure. He appoints the panels of assessors for inquiries under the Merchant Shipping Acts, and on the occasion of each inquiry selects the men to serve. In both these cases the functions have been given to him rather than to the Minister of Transport and the Board of Trade, because these departments might in some of the inquiries be supposed to be interested parties. The Secretary of State also appoints one member of the Tribunal

under the London Building Act, 1904, and fixes the remuneration of all the members: and he exercises some other minor powers of the same sort.

Chapter VII

POLICE ADMINISTRATION.

Organization.

Allusion has already been made to the immense, almost revolutionary, change which was brought about when the old parish constables were replaced by the organized and trained police forces which now cover the country. The change, long overdue, became inevitable under the modern conditions which had begun to prevail at the end of the eighteenth century. If highwaymen and thieves had been left to work on the lines of other modern organizations and to arm themselves with modern inventions and devices without any effective counter-organization, the advances of civilization of the last hundred years would have been impossible.

The latter part of the eighteenth century saw the first attempts to improve on the old conditions. Several large towns obtained local acts under which Improvement Commissioners established small forces of paid watchmen to supplement or supersede the inefficient parish constables and nightwatchmen. In Manchester for instance a night watch of fourteen men was established in 1797 in spite of some protests from ratepayers against the expense. In London also watchmen were appointed in some small areas, such as Kensington Square, under local acts: so that at last there were seventy distinct

bodies in London employing local watchmen under statutory powers. There were also established in London and its environs several bodies of constables with a wider jurisdiction. At each of the seven "Police Offices" (now Police Courts), there were six or eight constables who acted under the direction of the Magistrates; and the Chief Magistrate at Bow Street had under his control a more considerable body of constables provided and paid by the Home Office.* This force included a Foot Patrol in the streets and a Horse Patrol which had stations from Shooter's Hill to Hounslow, patrolled the highways for twenty miles round London, and seems to have done good work in the suppression of highwaymen. There was also a Thames Police of ninety men for the protection of shipping and barges and the maintenance of order on the river.

In the early years of the nineteenth century there was a series of inquiries by parliamentary committees which made depressing reports on the appalling prevalence of crime in and around London but suggested only minor improvements. It was left to Sir Robert Peel to provide an effective remedy on broad lines. In 1826 he had already sketched out† a scheme for a unified Metropolitan Police, and in 1828 he secured the appointment of a Select Committee which after a full inquiry recommended‡

* Report of the Select Committee on the Police of the Metropolis, 1828, p. 20 and App. G.

† Parker's "*Sir Robert Peel*," p. 432, letter of 8th December, 1826.

‡ Report of the Select Committee on the Police of the Metropolis, 1828, pp. 30-32.

that there should be established under the Home Office a single police force for an area "comprising the whole of the thickly populated district of the Metropolis and its environs," and that this force should absorb the police office constables, the River Police and the Horse Patrol, and should gradually supersede the parish constables and the watchmen appointed under local acts. Next year Peel passed the act which brought the force into being, appointed its first officers, and was recognized by the public as the author of the whole scheme in the names "Peelers" and "Bobbies" given to the new top-hatted guardians of the peace. The force had in its early days to struggle through a good many difficulties, but from the first its success was assured, and ten years later its boundaries were extended and its powers increased. It soon became the model of all British police forces and later of numerous police forces in the Colonies and in foreign countries. The Municipal Corporations Act of 1835 required all Borough Councils to establish in the same way a paid and permanent force under the control of the Watch Committee of the Council. The City of London, which on the Committee's recommendation had been excluded from the Act of 1829, followed suit in 1839, and in the same year the counties were empowered, and in 1856 required, to establish similar forces under the control of the Justices in Quarter Sessions.

There are thus at the present time four Police organizations in England and Wales, each acting under a separate series of acts of Parliament,—the Metropolitan Police, the City of London Police,

the County Police, and the Borough Police. The multiplicity of statutes makes a considerable difficulty in police administration, but it has the advantage of providing for the London area, for Counties, and for Boroughs, machinery adapted to the differences of place and the various forms of local administration: and in recent years the Police Pension Acts, which apply alike to all forces, and the Police Regulations under the Police Act of 1919, have secured a desirable uniformity in the conditions of police service.

The Metropolitan Police Force is under the direct control of the Home Secretary. He is the "Police Authority," is responsible for the appointment of the Commissioner of Police of the Metropolis who is its Chief Officer, and of the Assistant Commissioners, fixes the police rate in the Metropolitan boroughs and parishes, and through his financial officer the Receiver for the Metropolitan Police District collects the revenue and controls the expenditure of the Force. The Commissioner is the commanding officer of the force, all constables are appointed by him and obey his orders, and he makes all the arrangements for dealing with crime and for maintaining order, subject always to his obtaining the approval of the Home Secretary to all his standing regulations, and to all important orders affecting the public.

The question whether the Metropolitan Police, unlike all other police forces in the country, should be under direct government control, has often been raised, but there are two strong reasons for maintaining this arrangement. One is that if the

Metropolitan Police Force were transferred to the local authorities, it would have to be broken up into ten or more separate forces with an enormous loss of efficiency. The other lies in the importance of securing the protection of the Imperial Government by a strong civil force: if the Metropolitan Police were handed over to the local authorities, the government would have either to provide a smaller police of its own at an extravagant cost or to employ soldiers. In no other civilized country is the protection of the capital left to the police of a local authority: except where the protection is military, there is a police force under direct control of the central government, and in the case of the United States the whole administration of the district in which Washington stands is managed by a Committee of the Senate.

The position of the City of London police is somewhat anomalous. The City is a small area of one square mile in the very middle of the Metropolitan Police district which extends to 700 square miles: but when the Metropolitan Police was formed, the traditional independence of the City was respected by allowing it to retain its own force. This arrangement has had some advantages, and has not led to so serious a loss of efficiency as might be expected, chiefly because the two forces have always acted in harmony, and have been ready to give mutual aid when circumstances required it. The Common Council is the police authority for the City, and appoints the Commissioner who is the chief executive officer and responsible for the appointment and discipline of the force.

For the County Constabulary the police authority is now the Standing Joint Committee of the County Council and Quarter Sessions, and the Justices and popularly elected representatives thus share equally in the administration and financial control. Each force is commanded by the Chief Constable of the County, a statutory officer who appoints the constables and is directly responsible for the action of the force in repressing crime and maintaining order. He is appointed by the Standing Joint Committee, but his appointment and the number and pay of the force are by the County Police Act of 1839 made subject to the approval of the Home Secretary who has also power to make rules for the government of the force.

All smaller boroughs are now consolidated with the counties for police purposes—and it would add much to efficiency if a good many other boroughs agreed to consolidation—but at present there remain 123 larger boroughs which possess separate forces. By the Municipal Corporations Act of 1882 these forces are governed by the Watch Committee which is the authority primarily responsible for maintaining an efficient force. Subject to the recently enacted Police Regulations, to be mentioned presently, the Watch Committee appoints the constables, and determines their pay rank and duties: the Chief Constable is appointed by the Committee like other constables and has no special statutory position.

Thus in their original constitution the County forces were largely, and the Borough forces entirely, independent of the central government, but the

needs of the times have brought about changes which have given to the Home Office a much larger share in police administration. In 1856, a grant was made from imperial funds to police expenses: but the payment of this grant was by the Act of 1856 made conditional on the Home Secretary's certificate that the force was efficient in numbers and discipline and he was authorized to appoint Inspectors of Constabulary on whose report his certificate was to be granted. These Inspectors have ever since their first appointment been the eyes of the Home Office in police matters, and the Home Secretary's power to refuse the grant has proved a powerful instrument in maintaining efficiency, and at one time it helped to secure the merger of small and inefficient borough forces in the county. The grant, originally one fourth, afterwards one half, of the cost of the men's pay and clothing, was increased in 1918 to one half of the whole police expenditure.

A not less important change was effected by the Police Act of 1919. For a good many years the Home Office had been pressed by some of the chief county and borough authorities to take steps to secure uniformity in police pay and conditions of service in order to avoid unseemly competition among themselves in the matter of recruiting: and after the police strike of 1918 there was a strong demand among the men for a representative body which would be able to speak on behalf of all police forces in England and Wales. The Act of 1919 provided such a representative body in the Police Federation, and at the same time it

empowered the Home Secretary to make Regulations which should have statutory force and should apply to all police forces. These Regulations can be made only after consultation with the Police Council, a body constituted by the Act, on which representatives of the lower ranks appointed by the Police Federation and representatives of Chief Constables and Superintendents and of the Police Authorities meet together in conferences presided over by the Secretary of State or the permanent Under Secretary. The Act has thus instituted what is in effect a system of legislation on all points of police administration in which the final responsibility rests with the Home Secretary, but no alteration can be made without previous consultation with the representatives of the local police authorities and all ranks of the police. In practice it has worked well. It affords the Home Office an opportunity of ascertaining the views of all the constituent sections, and the Council after discussion has been able to offer unanimous advice on all save a very few questions. A complete list, for example, of disciplinary offences was, after a full discussion, passed unanimously. The Regulations adopted on the advice of the Council form a comprehensive code, dealing with the appointment, promotion, pay, discipline, etc., of all police forces, and, along with the Police Pension Act of 1921 which regulates pensions, have secured a large degree of uniformity in the conditions of police service without impairing the executive responsibility of the local Police Authorities and the Chief Constables.

Finance.

The finance of the Metropolitan Police Force involves much detailed work for the Home Office. It is managed by the Receiver for the Metropolitan Police District, who is responsible for obtaining all the supplies for the force of 22,000 men, and for the erection and maintenance of police buildings. He is the Home Secretary's officer and has his own staff and an office adjoining but distinct from that of the Commissioner: and all proposals for new expenditure and all contracts have under the Metropolitan Police Acts to be submitted for Home Office sanction. When there is any difference of opinion between the Commissioner and the Receiver as to incurring expenditure it has to be settled by the Home Office. The Receiver prepares an annual estimate of income and expenditure, each amounting to about six millions, which requires the Home Secretary's approval, and before the full estimate is prepared, he has to submit a preliminary estimate on which the Home Secretary bases his decision as to the amount of the rate to be levied on the boroughs and parishes of the Metropolis. In addition to the Treasury grant of half the net total expenditure, a special contribution is made under parliamentary authority for the imperial services of the Metropolitan Police.

Since the increase in 1918 of the Treasury grant, the expenses of the County and Borough Police, amounting to more than eleven millions a year, have also to be examined by the Home Office in order to determine the Government grant to be given to each force. Payments in excess of the

scales authorised by the Police Regulations have to be disallowed. Where constables are employed partly on police duties and partly on other services, such as the fire brigade or the inspection of weights and measures, expenditure has to be distributed between the police fund and other local funds; and where for example a building is used partly as a police station and partly as a town hall or courthouse, similar adjustments have to be made. In such matters as new buildings, contracts, etc., a reasonable check has to be kept on excessive charges. In the absence of such examination and control, the Parliamentary Vote for Police, which amounts for the present year (1924-5) to £6,115,336,* might easily increase to a still higher figure.

Executive Duties.

In normal times when there is neither war nor serious disturbance, the Home Office has little to do, except on certain special points to be mentioned presently, with the ordinary executive duties of County and Borough police—the suppression of crime, the arrest and prosecution of offenders, the maintenance of order in the streets, the enforcement of police regulations and the control of street traffic. It has to be satisfied by the reports of its Inspectors that these duties are carried out with reasonable efficiency, but for the rest the responsibility is with the local police authority and the Chief Constable. Even in these matters however much has been done by the Home Office to secure

* In addition to £2,905,050 from the Exchequer Contribution Account.

improved methods and better co-operation between the forces by holding conferences of Chief Constables, by the issue of notes and memoranda of information and advice, and by the activities of the Inspectors who combine with previous experience as heads of large provincial forces a wide expert knowledge of the best methods of police action.

The position of the Home Office is different in relation to the Metropolitan Police. Here the Home Secretary is the Police Authority: and, although the Commissioner is an officer appointed by Royal Warrant, and holds his appointment in the words of the statute, "for preservation of the peace, the prevention of crimes, the detection and committal of offenders, and the carrying into execution" of the other purposes of the Metropolitan Police Acts, the Home Secretary cannot divest himself of his responsibility for the executive action of the Commissioner and of the force under his command. By statute "all such orders and regulations as the Commissioner shall from time to time deem expedient" are "subject to the approbation of the Secretary of State," and the Commissioner must "execute such duties as shall be from time to time directed by him." As Sir William Harcourt put it, "it is quite plain that the intention of the legislature was to put the police force under the authority of the Secretary of State, and to hold him responsible, not for every detail of the management of the force, but in regard to the general policy of the police in the discharge of their duty."*

This being the legal position—the Commissioner

* Parliamentary Debates, 330, 1513.

charged with the initiative in the measures to be adopted and the command of the action required for carrying them out, the Home Secretary burdened with the final responsibility for policy—it is obvious that there must always be the closest co-operation between them, that they must constantly work together, and where differences of opinion exist, arrive at a mutual settlement in which, if the final decision rests with the Home Secretary, he is never likely to dispute the Commissioner's knowledge of what his constables can do and how they can best do it. Such co-operation and mutual support have prevailed for the ninety-five years since the force was formed with the exception of one short interval. In 1886 the Commissioner, Sir Edmund Henderson, was held responsible for the failure of the police to prevent an unexpected outbreak of violence which followed a meeting in Trafalgar Square, and, though the failure was really in the nature of an accident, was compelled to resign: and his successor, Sir Charles Warren, naturally felt that, if the responsibility for such an incident attached to his office, he should have a free hand in the measures he took to prevent its repetition. In these circumstances he adopted a policy of military repression in which Mr. Matthews, the Home Secretary, found it increasingly difficult to acquiesce, and when ordinary official criticism was offered by the Home Office to his administrative proposals, he adopted an attitude of violent resistance until his personal relations with his chief became strained to the last point. Finally he published, contrary to rules of the service, an article of an

alarmist character which was in effect an attack on the Home Secretary, and on the Home Secretary's expressing his disapprobation he resigned. In the debate in the House of Commons which followed, Sir William Harcourt defined clearly the relations of the Commissioner and the Home Secretary, and his intervention saved Mr. Matthews from defeat. Strangely enough, Sir Charles Warren's successor, Mr. James Munro, who had been head of the Criminal Investigation Department and hitherto a sound and level headed administrator, followed within two years the same course, defied the Home Secretary, supplied to newspapers materials for attacking his policy, and allowed the force with which he was popular to reach a stage of indiscipline bordering on mutiny. Like his predecessor he was not handled very tactfully and like his predecessor he had to resign. With the appointment of Sir Edward Bradford to succeed him a complete change took place: he was strong and tactful, crushed firmly a mutiny at Bow Street, brought the police back to discipline and contentment, and maintained the most cordial relations with the Home Office. Such relations have been maintained ever since, and cannot be better described than in Sir William Harcourt's words. The Home Secretary and the Commissioner of Police are, he said, "confidential colleagues acting together in discharging a very responsible public duty." "It is a matter entirely at the discretion of the Secretary of State how far the principle of responsible authority shall interfere with executive action, and the less any interference happens the better.

The Commissioner is the man who knows the force under him, what is its work and how it can best be accomplished: but for the policy of the police, so to speak, the Secretary of State must be, and is, solely responsible." "For a Commissioner to declare a condition of independence of the Secretary of State is a thing I never conceived possible: such a state of things would be intolerable": but "a Secretary of State who interfered unduly with the executive authority of the Commissioner would be extremely unwise."* These statements were accepted by the House of Commons and represent the principles which in many difficult situations have governed the relations of the four Commissioners of Police and fourteen Home Secretaries who have held office since 1892.

It remains to mention certain points in which the powers possessed by the Home Secretary enable his department occasionally to assist the police in their executive duties for the repression of crime and the arrest of offenders.

(1) In the Metropolitan and City Police and in the larger provincial forces there is always a Detective or Criminal Investigation Department consisting of officers specially selected for the investigation of the graver and more complicated cases of crime. It is difficult to draw a line between the duties of detective officers and of the uniform police: and in the smaller forces it is not practicable to set apart any body of men specially for detective duty, while the serious crimes occurring within

* Parliamentary Debates, 330, 1161-2.

their jurisdiction are too few to afford experience of intricate investigations. To meet this difficulty assistance may be sought from some larger force for the purpose of unravelling any particularly serious and complicated crime, and in this respect the Criminal Investigation Department of the Metropolitan Police has a great advantage over all others. It has sometimes been suggested that there should be a national detective force under the Home Office and operating throughout the whole country: but the difficulties which would arise in securing co-ordination between such a force and the independent local forces appear to be insuperable, and the same end has been attained by an arrangement made by the Home Office which enables the local forces to obtain at any moment the assistance of skilled officers from New Scotland Yard. Successive Home Secretaries have urged police authorities to apply promptly for such aid whenever a murder or other serious crime is committed which seems likely to present exceptional difficulty. The charge which is usually made when one police force lends help to another is not made in such cases, the expenses being covered by the parliamentary grant to the Metropolitan Police for their Imperial Services, and the only condition imposed is that the application for assistance should be made immediately the crime is discovered and before any clues there may be to the perpetrator are lost.

(2) Another point on which the Home Office is able from time to time to give assistance in tracing a criminal is by the stopping of letters in the post.

One of the chief reasons for the original establishment of the Post Office as a government monopoly was to secure control of treasonable or dangerous correspondence. The preamble to Cromwell's Postage Act of 1657 alleged that to give the government the sole right to carry letters was "the best means to discover and prevent many dangerous and wicked designs against the Commonwealth by inspection of correspondence." In the reign of Charles II the right of opening letters entrusted to the King's Post was by Royal Proclamation restricted to persons acting under the immediate warrant of a Secretary of State, and this right has been recognised and the restriction maintained in successive Post Office Acts from the nineth year of Queen Anne to the eighth year of King Edward VII. The power was freely used during the eighteenth century to obtain information as to criminal designs against the State, and in 1782 Fox issued a warrant to the Postmaster General for the inspection "of all letters and packets that shall come into your custody directed to, or sent by, any foreign minister": and in 1801 the examination of "all letters addressed to persons in France, Flanders and Holland" was authorised. In 1844 the Law Officers advised that the warrant need not specify a particular letter but might authorise the opening of "all letters directed to a particular individual or otherwise sufficiently describing the letters intended." A severe check was given to the use of this power by an incident in 1844. Sir James Graham was then Home Secretary and he, at the request of the Foreign

Secretary, authorized the opening of letters addressed to Mazzini, the Italian patriot. When this became known, the sympathy then felt for the cause of Italian liberty led to a violent attack on a statesman who had merely exercised an acknowledged right of the Crown with a view to prevent men to whom England had given asylum from making this country the base for an armed attack on a foreign power which whatever its misdeeds was at peace with this country. Two parliamentary committees appointed to inquire into the matter found that the power of opening letters had been properly exercised and ought to be continued. Nevertheless the incident made a deep impression and for many years the letters even of known criminals were regarded as almost sacrosanct and the authority to open them rarely given. Sir William Harcourt however used the power freely in the years from 1881 to 1885 to discover and thwart the designs of the dynamiters; and before and during the Great War, the letters of German spies were examined with striking success. At the beginning of the war the information obtained by the use of the Home Secretary's warrants enabled the Military Intelligence department to make so clean a sweep of enemy spies that from 4th to 21st August the Germans had no idea that the British Expeditionary Force had been formed or had left England.

The same power is also used, though with great caution, to assist the police in the pursuit of persons guilty of murder or other grave crime. Where the person who perpetrated a crime is known, there is not much objection to opening letters

which may reveal the place where he is hiding: but much greater restraint is exercised in using the power to obtain evidence against a person suspected of crime, and only when the crime is one of great gravity and the ground of suspicion definite is a warrant issued. It is also on rare occasions used to trace a missing person particularly if there be suspicion that a woman or child is improperly detained: but the mere fact that a man or woman has chosen to disappear is not regarded as justifying its use: and generally speaking it is used only in criminal cases and only when the crime is a serious one. The same power extends to telegrams: and, as the originals of telegrams are preserved for some months by the Post Office, they are not infrequently available as evidence, though their production in court is obtained by subpœna and not by the Secretary of State's warrant.

(3) Another way in which assistance is sometimes given by the Home Office to the police is in authorizing analyses to be made by its expert toxicologists in cases of suspected poisoning. In cases of murder and manslaughter this is usually done in connection with the inquest and on the application of the Coroner as mentioned in the preceding Chapter.

A method by which the Home Office at one time endeavoured to aid in the apprehension of criminals has been abandoned as useless. This was the offer of a reward for information which would lead to the discovery and conviction of the perpetrator of a murder or outrage. The Home Office used

occasionally on application from the police to offer such rewards particularly in cases of murder, and the offer was usually accompanied by a promise of pardon to any accomplice who might give the information: but for more than forty years the practice has been discontinued. The occasion for its discontinuance was a case in which four men conspired to cause an explosion at the German Embassy, but three of them, losing their nerve, each separately gave information to the police of the proposed outrage. It was afterwards ascertained by the police and came out in the trial that the conspirators hoped that after the explosion a large reward would be offered and they intended, in order to obtain it, to plant papers on an innocent person and accuse him of the crime. This led Sir William Harcourt to inquire into the whole subject, and he satisfied himself that such offers served only as eyewash to the public excited over a crime and hardly ever produced any information of value: that there was great danger of the practice leading to the concoction of evidence and even (as almost happened in this case) the perpetration of crime*: that useful information was sometimes held back in hope of an offer of reward, and that when a reward had been offered the police were apt to feel that nothing more was required of them and to relax their efforts to discover the

* A case occurred in 1860 when a murderer, in hope of obtaining a reward of £300 which had been offered, accused an innocent person of the murder which he had himself committed. He did it clumsily and instead of getting the reward put the rope round his own neck.

criminal. He therefore decided that no more rewards should be offered and maintained his refusal in spite of strong pressure, and to this policy the Home Office has ever since adhered. No reward is ever offered for information and evidence leading to the conviction of an offender; and, though some of the objections do not apply to rewards for information as to the whereabouts of a known and named person, such rewards are rarely offered and still more rarely produce the desired information.

The grant of a small reward for information actually given is sometimes useful in the interests of justice: it is not open to objection if there be no previous public offer and the circumstances are such that there can be no risk of the concoction of evidence; and sometimes it may be right to promise a pardon to an accomplice who is known not to be the principal. The Home Office also occasionally allows a reduction of sentence when a prisoner gives useful information, with regard for example to the place of concealment of stolen property. But there seems to be no doubt that the public offer of large rewards was detrimental to the interests of justice and that the discontinuance of the practice has had an invigorating effect on police activity.

Chapter VIII

PRISONS, BORSTAL INSTITUTIONS AND BROADMOOR

One of the darkest pages in the social history of England is that which tells of the condition of English prisons in the eighteenth and early nineteenth century. Compared with it the record of the frequent infliction of the death sentence comes as a merciful relief. Mr. and Mrs. Sidney Webb, in their "English Prisons under Local Government," have for the first time told the story consecutively and graphically; but here we are concerned with His Majesty's Prisons which have been administered by the Home Office—convict prisons from the opening of Millbank in 1821, and local prisons from their transfer to national control in 1878.

Convict prisons were first established for the temporary detention of men sentenced to be transported. From the time of Charles II transportation had been the ordinary form of punishment for serious offences not punished with death. After the American Colonies were closed for this use, convicts until they could be transported were either kept in overcrowded county gaols or in the hulks, the most horrible places of imprisonment ever known: and later, nine years were spent and vast sums expended in constructing Millbank Prison for this purpose. It was not however until 1840,

when New South Wales was closed and the condition of the hulks had become intolerable, that the government found itself compelled to make fuller and better provision for the housing of convicts, and Pentonville Prison was erected on the latest model, to be followed in 1848 by Portland where the Admiralty quarries could be worked by the convicts, and in 1850 by Dartmoor where during the Napoleonic wars the French prisoners of war had been interned. These prisons were, by an Act of 1850, placed under the control of the "Directors of Convict Prisons," and in 1853 the first Penal Servitude Act provided definitely for the passing of sentences of penal servitude in place of transportation. Transportation ceased altogether in 1867, and by 1878 there were fourteen Convict Prisons and about 10,000 convicts under the control of the Directors.

Meantime reformers were urgently pressing for improvements in the local prisons, with the result that government interference gradually increased. In 1823, Peel as Home Secretary passed a Prison Act, the "first measure of general prison reform to be framed and enacted on the responsibility of the national executive," which prohibited profit-making by the gaolers of county prisons and required the Justices to provide proper sanitation, reformatory treatment, and systematic inspection. In 1835 the Reformed Parliament passed an act which extended to all prisons, required prison rules to be approved by the Home Secretary, and instituted Home Office inspection. Thirty years of Home Office inspection led up to the passing in 1865 of a far more drastic

act which imposed on all prisons a uniform code of rules: and finally in 1877, partly to relieve the rates and partly to secure economy and better administration, Sir Richard Cross induced Parliament to transform all local prisons into government establishments.

By the Prison Act of 1877, the Prison Commissioners were constituted in whom all prison property is vested, and who under the general control of the Home Secretary carry on the whole prison administration. The Directors of Convict Prisons retained their powers but the two bodies had a common office and a common staff, and Sir Edmund Du Cane, who was Chairman of both boards, ruled both with a rod of iron, so that it made little difference that, as vacancies occurred, the personel of the two boards was amalgamated, and finally by the Act of 1898 the appointment of Prison Commissioner was made to carry with it that of Director. While the details of Prison administration are left to the Prison Commissioners, the Home Secretary has, as in the case of the Metropolitan Police, the supreme control of policy. He makes or approves the appointments and promotions in the Prison Service, acting almost always on the advice of the Prison Commissioners. He also makes, subject to their being allowed by Parliament, the Prison rules which determine the disciplinary control and the rights of prisoners, and the duties of the prison officers and Visiting Committees: and in this matter also he acts generally on the advice of the Prison Commissioners, although, when questions of policy or of relations with other

authorities are involved, he relies also on the advice of his own staff. The co-operation of the Home Office staff is frequently required in the many matters in which prison administration comes into contact with the Courts of Justice, the Sheriffs,* the Police Authorities and the Director of Public Prosecutions.

The Prison Board as now constituted consists of four members—the Chairman, the Medical Commissioner, a Commissioner with long experience in the prison service, and a Commissioner with special experience of social work. They have under their control the local prisons, which number only 33 as against about 250 in 1823 and 100 in 1877, three convict prisons as against fourteen in 1877, one preventive detention prison, and four Borstal Institutions.

It used to be said that there were three elements in punishment—retribution, deterrence, and reformation. The element of retribution has now practically disappeared from the prison code, and so have the harsher features of deterrence. Under the regime introduced in 1898, the tread-wheel and crank are gone, the starvation diet is gone, and the so-called plank bed survives only for adult males under the age of sixty sentenced to hard labour, and that only for the first fourteen days of their sentence. There is no "hard labour" in the old sense, and it is a pity that this misleading term

* The execution of capital sentences is carried out in prisons, but the Sheriff is the officer responsible. The prison authorities give assistance in such matters as providing apparatus and lodging the executioner appointed by the Sheriff, while the Home Secretary has the duty of making rules as to the date and the mode of public notification.

survives in the statutes. Some prisoners no doubt look on eight hours a day of steady work as a hardship: but the chief deterrent elements in imprisonment, apart from the disgrace and the loss of employment which it often involves, consist in the loss of liberty, the life of routine under close supervision, and the absence of such luxuries as beer and tobacco. Some persons are so constituted that loss of liberty does not affect them, and cases occur of men who commit offences in the workhouse in order to secure what they regard as the greater comfort of prison, while others are found who accept it as a beneficial rest cure: but speaking broadly the improved conditions have not in practice diminished its deterrent effect. One hears much of the miserable men and women who return again and again to prison, but there is no reason to think that their number has increased, and nothing is heard of the larger number for whom one lesson is enough, and who leave the prison never to return: or of the possibly still greater number whom the fear of punishment deters altogether from transgressing the law.

By the Home Secretary's rules made under the Act of 1898, all prisoners under terms of more than a month can earn, by industry and good conduct, a remission of one-sixth of their sentence, and this has proved a valuable incentive to diligent work and good conduct.

It is on the reformatory side of prison treatment that the Prison Commissioners have in recent years concentrated their efforts. Their object is, by steady work, by industrial training when the

sentence is long enough, by suitable education in evening classes and by avoiding all unnecessary degradation, to quicken the activities of mind and body and to make of their prisoners good citizens: but, whether the sentence is long or short, an essential point is to prevent new offenders from being contaminated by association with those who are old in sin. At one time many reformers outside and inside the Prison Service sought to do this by the system of separate cellular confinement, but separate confinement produced other evils, and now prisoners, though separated in their cells at night and during meals, associate during work and exercise, and silence is only enforced so far as necessary to maintain quiet and good order. In these circumstances the chief means of preventing contamination has to be found in the proper classification of the prisoners, and this is to some extent secured by the legal requirement of three Divisions, First, Second and Third, introduced by the Prison Act of 1898. The First Division represents the old First Class Misdemeanants, but the number sentenced to imprisonment in this division is almost negligible. The courts are properly reluctant to allow the luxuries of this class to persons wealthy enough to pay for them, and they are rarely given even to the political prisoners for whom they were originally intended since the time when the suffragettes sent to Holloway in the First Division used the privilege of free visits and letters to conduct a political propaganda from the Prison. But the distinction between the Second Division and the Third is of great value, and the Home Office has

been insistent in endeavouring to induce the courts to place in the Second Division all prisoners of good antecedents and to leave in the Third Division only those already of bad or doubtful character. These efforts have not been altogether successful Many prisoners of previous good character are still left by the Courts in the Third Class, an evil which has had to be remedied by prison arrangements which allow them to be grouped with the Second Class. But no similar remedy is available when Magistrates defeat the object of parliament by placing persons of bad character in the Second Class under the mistaken impression that they will get better medical treatment there. The Second Division are allowed more letters and visits than the Third, but both classes do the same work and have the same medical attention, and the essence of the classification is the separation of the comparatively good from the more degraded or hardened.

The Prison Commissioners have carried classification further than the legal requirements and in particular have separated all youthful offenders, male and female from adults. For adults something can be done by the work of chaplains, schoolmasters and voluntary visitors, and a little more by the after-care of the Prisoners' Aid Societies, encouraged and guided by the Prison Commissioners and subsidized from public funds. But there is far more hope of good results in the case of the youthful offenders if their sentences are long enough for the application of a sound scheme of industrial training and education. All prisoners between the ages of sixteen and twenty-one, and those few between

fourteen and sixteen who are still sent to prison as being too unruly or too degraded for any other treatment, are separated from adult prisoners, and, if their sentences are for more than three months, they are transferred to " collecting centres " where special provision is made for their education and physical training on the same principles as are applied more fully in the Borstal Institutions to be mentioned later. Whether so transferred or not, their education is the special task of the schoolmaster, and something is effected by the personal interest and oversight of the higher officers and of outside visitors, while on their release they come under the care of the " Young Prisoners' Committees," by whom a large proportion are placed in suitable employment.

In Convict Prisons the gravity of the crimes and the greater length of sentence—from three years penal servitude to penal servitude for life—necessarily make the deterrent element in the punishment more prominent: but the treatment does not now differ in any essential point from that of prisoners in local prisons. Better work can be given, as in the farm at Dartmoor and the printing works at Maidstone, and the prison authorities have a freer hand in classification, as in concentrating the first offenders at Maidstone, and the sickly prisoners and those of doubtful mental stability at Parkhurst, while there is at Maidstone a separate " star class " for young convicts under twenty-one. Prisoners under long sentences, by successive steps depending on good conduct, reach a stage at which considerable relaxations and privileges are allowed. By good

conduct and industry, male convicts can, and usually do, earn a remission of one-fourth, and women convicts of one-third of their sentences; and selected convicts on release on licence, instead of being required to report to the police, are with their own consent placed under the care of the Central Association for the Aid of Discharged Prisoners.

The prison at Camp Hill, adjoining Parkhurst, was built for the detention of habitual criminals who are sentenced by the courts to undergo *preventive detention* after they have completed a term of penal servitude, or convicts of the same class whose penal servitude has been commuted by the Home Secretary to preventive detention. Preventive detention was an attempt to apply in this country the principle of the Indeterminate Sentence so popular in America: and the whole regime of the prison is based on the idea of reducing penal conditions to a minimum and of allowing any prisoner who is willing to reform to pass through successive stages of increasing liberty until it is thought right to allow his discharge. The experiment has not proved an unqualified success. The Act of 1908 laid down a somewhat rigid definition of "habitual criminal," and the Court of Criminal Appeal has interpreted it so strictly as almost to defeat the object of the Act. The number of persons subject to preventive detention is therefore small and it is decreasing, the persons admitted are criminals of the most hopelessly habitual type, and the difficulty of deciding when a prisoner shows such improvement as indicates a real intention to

abandon criminal ways has proved very great. It has to be confessed that, excluding selected men released for service or employment during the war some of whom won distinctions, the proportion of men released from Camp Hill who have done well has been very small.

Far more successful has been the work done in the *Borstal Institutions*, which were established under the same Act and in which the system previously applied to young prisoners in the old Prison at Borstal has been developed and extended. There are now four "Borstals": Borstal itself, Feltham and Portland for boys, and Aylesbury for girls. The inmates are mostly under sentence of three years, but they are all able to obtain release on licence after two years or sometimes earlier. The essence of the system is to give them the best moral, intellectual and physical education that can be contrived, good industrial training and plenty of healthy recreation. The boys' institutions are divided into "houses," each under the charge of a "housemaster" of superior character and education assisted by the best officers selected from the whole prison service. The boys do eight hours hard work a day, at first for a month or two in the domestic service of the institution, afterwards in the well-equipped shops for iron work and carpentry, in rough tailoring or shoe-making, in cookery or on the farm. In the evening there are classes and time for reading and indoor games, with occasional cinemas or lectures; and at Borstal on Saturday afternoons cricket or football is played

outside the institution by the boys of the "special grade" without the attendance of warders. On Sundays some of the special grade boys from Borstal attend service in Rochester Cathedral. There is very little of the appearance of a prison about the place: the gates stand open all day, and the officers do not now wear uniform. The few escapes that occur are due chiefly to the spirit of adventure natural to healthy youths. When they are released, work is found by the Borstal Association for those who have no friends to help them to obtain employment and they are carefully watched and assisted. If they do badly they are recalled, and have a further term of detention.

It is not to be expected that this or any other system can make honest men of all the youths of the class to whom it is applied. They come to the institutions the worst young rascals in the country —most of them repeatedly guilty of offences—and many more or less weak-minded. Many in spite of the chances given them fall again into crime, but a large proportion do well, and the system is on the whole a success.

It remains to say something of the numerous duties in connection with prisoners which fall on the Criminal Division of the Home Office as distinguished from the Prison Department. Every prisoner has the right to petition the Home Secretary on any subject and without any qualification except a rule against petitions which are merely abusive or obviously frivolous, and he is entitled to an answer. The petitions from the

prisoners or from their friends outside number many thousands a year. Most of these relate to their sentences and come under the heading of the Prerogative of Mercy. Others relate to prison treatment and are sent forward with reports from the Prison authorities which usually leave little doubt as to the reply to be given: but, when persons not really of the criminal class force their way into prison for purposes of political propaganda —suffragettes, conscientious objectors, or recalcitrant town councillors—and set themselves to defy the prison rules, questions arise which require very delicate handling from the Home Secretary, who is always anxious to avoid making martyrs and yet is bound to maintain the necessary safeguards of prison discipline. Other petitions refer to the prisoners property or business: it rests with the Home Office to appoint an administrator of the property of a felon under sentence of penal servitude and to allow any prisoner special facilities while in prison for the settlement of his affairs, imposing only such safeguards as are necessary to stop the abuses which have occurred from time to time in connection with the visits of a prisoner's solicitor. All licences (tickets of leave) are granted by the Home Secretary, and in connection with these there is often a discretion to be exercised as to imposing special conditions (for example, to prevent a convict from going to the place where the victim resides, whom he attacked and against whom he still bears malice), or as to whether he should report to the Police or to the Central Association. Where acts of violence by prisoners are punished by flogging,

the sentence of the Visitors or Visiting Committee has to be confirmed by the Home Secretary, but the number of such cases is very small.

When a prisoner is found insane by the jury and ordered to be detained during His Majesty's Pleasure, or is certified insane while serving his sentence, it rests with the Home Office to determine the asylum to which he should be sent and to order his removal. All insane prisoners who have been guilty of murder or of offences of extreme violence, or who are known to be of violent and dangerous character, are sent to Broadmoor: others go to their County or Borough Asylums, where arrangements at the expense of the Prison Vote are made for their maintenance during sentence.

Broadmoor Asylum is not part of the prison system, but is under the direct control and administration of the Home Office, aided by a local Board of Supervision. The majority of its inmates are persons who have committed murder while in a state of insanity, and though most of them are permanently insane, there are a good many who have recovered their sanity and yet remain liable to recurrent attacks and would if released be likely again to commit murder. In the past there has been more than one case where a patient who had recovered and had been perfectly sane for several years, lost little time after discharge in relapsing into insanity and killing his wife or father. In these circumstances the question of release obviously presents great difficulties; and those patients who, though sane and harmless in the quiet of the asylum

are liable under other conditions to relapse into dangerous insanity, must remain there, it may be for life; all that can be done for them is to make the asylum conditions as happy as possible. There is probably no asylum in the country where the conditions are better than the wards in Broadmoor for the quiet inmates. Many years ago a man who at the end of a sentence had been discharged as sane from Broadmoor and afterwards found his way into a local asylum, murdered a fellow inmate, arguing quite logically that he had benefited both himself and his victim: he had sent a miserable man straight to heaven, and he had secured his own removal to Broadmoor. On the other hand, the utmost care is taken not to detain any inmate longer than is necessary in the interests of safety. A report on every case is made annually to the Secretary of State, and the undertaking by a relative or friend to assume the care of a patient and to report at once any symptom of a return of his malady, will sometimes do much to facilitate his discharge. In such cases the discharge is conditional on the patient's returning immediately to the asylum if required to do so by the Home Secretary.

The Superintendent of Broadmoor occupies perhaps the most dangerous post in the Civil Service. Every lunatic believes the Superintendent to be responsible for his continued detention, and within the last forty years two have received permanent injuries from attacks by inmates who appeared to have recovered their sanity and two have retired worn out with the anxieties of their position.

Yet their management of the asylum has been so good that there is no institution under the Home Office which has excited so much admiration from foreign visitors studying the treatment of crime and lunacy in this country.

Chapter IX

HOME OFFICE SCHOOLS AND PROBATION

Industrial and Reformatory Schools.

The Industrial and Reformatory Schools are schools established by voluntary managers or by local authorities for the purpose of rescuing children and young persons from a criminal life or criminal surroundings and giving them the education and training which will make them useful citizens. They have been described as "handmaids of the Prison system": but this description is not a happy one. These schools have been from the first the foes of the old prison system, and they are still not followers but pioneers in the war of humanity against crime and degradation. It is matter of history that they originated in the same philanthropic movement that at the end of the eighteenth and in the first half of the nineteenth century led the attack on the old prison system. The earliest schools were founded as voluntary institutions by men and women who realized the horrors of unreformed prisons and were ready to devote their lives and fortunes to the work of rescuing children from their influence.

The first use of these schools by the government was occasionally to pardon a youthful offender

sentenced to death or transportation on condition of his being received and trained in a reformatory school; but by degrees their value came to be more fully recognized, and in 1854, when Lord Palmerston was Home Secretary, the first Reformatory School Act and the first Industrial School Act were passed. The latter applied only to Scotland, but was soon followed by English legislation. The number of schools increased, local authorities were brought into the field to found schools in the same way as voluntary managers had done, and, with the aid of Home Office grants and Home Office inspection, they became a powerful agency in the reduction of crime. In 1866 the previous acts were consolidated and the schools placed on a permanent basis: and in 1908 the Children Act re-enacted the whole law on the subject with many important amendments. In 1920 a liberal increase of the government grant relieved the schools from economic troubles and placed their finances permanently on a sound footing.

The majority of the schools still remain in constitution private establishments conducted by voluntary committees who are responsible for their maintenance and their efficiency: but all their inmates are sent there by the action of the local authorities and the courts, and practically the whole cost is borne in equal shares by the local authorities and the state, while the Home Office, through its inspectors and by means of its control of their finance, has a final voice in all that relates to their management and the treatment of their

inmates. It might seem that it would be simpler for the State to take over these schools altogether, but the Home Office in fact attaches great importance to the personal interest taken in the schools and their inmates by good voluntary managers, and no administrative simplification would compensate for the loss of this interest. In schools established by the local authorities it is essential to success that the advantages of voluntary management should be secured by the appointment of school committees of men and women who will devote time to the work and take a keen personal interest in the children and young people committed to their care.

In all that concerns the work of the schools the Home Office acts through its inspectors (five men and two women) and is largely guided by the advice of the Chief Inspector. No school can be opened until it is certified by the Home Secretary, and, if he is dissatisfied with its management he can withdraw his certificate—a step which has sometimes been necessary. He limits the number to be received in each school, and the plans of the buildings and all substantial alterations in them require his previous approval. He can discharge a child at any time, or transfer it from one school to another—both powers not infrequently exercised. He approves of the rules of the schools, and model rules are from time to time prepared for the assistance of Managers. Recently a new model code* has been drawn up in consultation with representatives of the Managers and Superintendents and has been adopted by

* Second Report of the Children's Branch of the Home Office. (Stationery Office publication), pp. 37-39.

most schools. The Treasury grants, now amounting to half the total expenses of the schools, are given on the recommendation of the Home Office and subject to conditions as to expenditure and good management which are settled by the department.

The distinction between Reformatory and Industrial Schools turns partly on the age of the children sent to them and partly on their characters. The youthful offenders in Reformatories enter between the ages of twelve and sixteen, are trained in the schools for the time fixed by their sentence (three to five years) unless released earlier on licence, and in any event remain under the supervision of the Managers till they are nineteen years of age. Children in Industrial Schools enter at any age below fourteen, remain in the schools till they are sixteen unless licensed sooner, and are under supervision until they are eighteen. The youthful offenders in Reformatories have all been convicted of criminal offences: in Industrial Schools some of the children have under the age of fourteen been guilty (not formally convicted) of offences, but the majority are children who were living under such conditions as would be likely sooner or later to lead to criminal life—children found begging or wandering, children whose parents are in prison, children of drunken parents unfit to have charge of them, children found living in brothels. Some of the children committed to Industrial Schools are very young, and provision is made for boarding out those under the age of ten.

The children or young offenders are committed to the schools by orders of Judges or Magistrates,

but the schools are in no other sense prisons. In all other respects they are residential schools where the children receive in their earlier years a good ordinary education, doing not more, and often much less, domestic work than children of the same class might do in their own homes, and having full opportunities for games and recreation. Athletics and swimming are encouraged and there are annual competitions between schools, in which the children take a keen interest. In their school work special attention is given to industrial teaching and later they are trained in various industries or occupations —there are farm schools and ship schools—and they are sent out on licence when suitable employment is found for them. Since the Committee appointed by Mr. Churchill made its report in 1913, practically all the administrative improvements it recommended have been carried out by the steady work of the Inspectors and with the aid of the increased grants. Greater liberty is allowed, and children from some of the industrial schools now attend outside elementary schools. Provision is made for annual holidays, the means of recreation are increased, and all industrial work is now educational, such employment as continuous wood-chopping being prohibited. Earlier licensing is the rule, and increased emphasis is laid on the duty of the superintendents and managers, not only to find employment for those leaving the schools, but to watch carefully over them during the period of supervision; and returns have to be made to the Home Office showing the occupation and conduct of each young person for three years after

discharge. Of 2,500 boys who left the schools in 1923, 250 entered the Army or Navy, 100 the Mercantile Marine, 540 skilled trades, 400 mines or factories, and 370 agricultural employment.

Every school has its medical officer who visits regularly: and the two medical members of the Inspecting staff—a man and a woman—watch over the health of the children and the sanitary condition of the schools. The old practice by which schools exercised their power of rejecting children not in perfectly sound health has disappeared, and its place is taken by arrangements by which a number of schools are certified for the reception and treatment of mentally or physically defective children, while weaklings are received in ordinary schools where the superintendents are willing to give the special care and attention their condition demands.

As the reformatory schools are recruited from youths and girls of the most undisciplined and unruly class of the community, it necessarily happens that difficulties sometimes arise in the maintenance of discipline—the more easily that so much liberty is now allowed and obedience is not enforced by the old prison methods. The management of this class of school requires peculiar qualities in the superintendent and teachers which few possess, and which can only be ascertained by actual trial. When such troubles arise the managers can always rely on the personal help of the Inspectors, but the Inspectors and the Home Office are bound to insist on the elimination from the staff of officers who, however good in other respects, prove unsuited

for the work, and particularly of any who disregard the strict rules now established as to the punishments which may be imposed and attempt to maintain their authority by excessive severity. Such troubles, considering the previous character of the offenders committed to the schools, are singularly few, and the reports of them which appear in the press are almost invariably exaggerated and sometimes invented.

It would be difficult to over-estimate the importance of the part played by these schools in the great reduction in crime in the last fifty years of the nineteenth century. Before Borstal Institutions were thought of or the Probation system introduced the proportion of crimes to population was reduced by more than one-third. It is said* that a century ago there were in London 200 flash houses frequented by 6,000 boys and girls who had no means of livelihood but thieving: and there were schools where children were regularly instructed in crime. All these places have disappeared, in large part no doubt as the result of police action, but in part also because the children who in old times would have served an apprenticeship in thieving are now sent to the reformatory and industrial schools and trained in honest ways.

In the last twenty years the situation has again changed: partly owing to their own success, partly to the introduction of the Probation system, the demands on the schools have become much less: the number of inmates has fallen from 19,000 before the war to about 8,000, and instead of 168 schools,

* By Sir Edmund Du Cane, *Chambers' Encyc.* (1891), VIII, 615.

some of them overcrowded, there are now only 120 including some 20 Special Schools which take only a small number of Home Office cases. So far as this is due to improved social conditions, to extended education, and to the proper use of the Probation system, it is matter only for satisfaction, but there is still a large field for the work of the schools, and there is reason to fear that, on account of the expense of the schools and the ease of putting offenders on probation, some children are being denied the benefits which would result from their committal to suitable schools.

Probation.

The idea of putting offenders on probation is not a new one. The higher courts have always had the power of ordering an offender to come up for judgment at a future date with an intimation that if he conducts himself well in the interval the sentence will be nominal; and the Summary Jurisdiction Act of 1879 gave magistrates a similar power of release on recognizances, which was re-enacted in more explicit terms as regards certain offences in Sir Howard Vincent's Act of 1887. But these powers were rarely exercised, and indeed there were few cases for which they were appropriate so long as there was no provision for seeing that the person released on probation observed the conditions imposed on him. What is new—adopted in this country largely as a result of its success in America—is the appointment of Probation Officers and the building up of a regular system of probation.

This system was introduced in this country by Parliament's passing, on the recommendation of a Committee over which Sir Herbert Samuel presided, the Probation of Offenders Act of 1907, and was amplified and extended by the Criminal Justice Administration Act of 1914.

These acts provide for the appointment and payment of Probation Officers, and the essence of the system is that an offender whose age, previous character and the nature of his offence justify such a course, should be released on condition of his living honestly, obeying the law, and reporting regularly to a Probation Officer who becomes responsible for seeing him at frequent intervals, aiding him with advice and guidance, and, where necessary and practicable, finding him employment. Other conditions such as residence in a particular place, abstinence from drink, etc. can be imposed in appropriate cases. If the offender carries out the conditions, he is free at the end of the time fixed by the order. If he fails, he is brought again before the Court and sentenced.

The Probation Officer is appointed by the authority which appoints the other officers of the Court—in the London Police Courts the Home Secretary, in all other Petty Sessional Courts the Justices: and he is paid from the same funds from which the other expenses of the Court are paid, either by fixed salary or by fee for each case. Fees were however intended only for the time while the system was on its trial: a full time probation officer ought always to be paid by salary.

It results that in London the organization,

appointment and payment of the probation officers rests with the Home Office. The first step taken after the passing of the Act of 1907 was the appointment of women at fixed salaries as Children's Probation Officers for boys as well as for girls: while arrangements were made by which the Police Court Missionaries who were already doing much work in the nature of probation were appointed Probation Officers for adults. Both arrangements have worked well. There is now at each Metropolitan Court an educated woman who takes charge of all children placed on probation: and the employment of the Police Court missionaries as probation officers has developed, has been extended to Middlesex, and is now carried on under the charge of the London Police Court Mission Committee on which the Home Office, the London Magistrates and the Middlesex Justices are represented. If the Home Office is satisfied with the qualifications of the missionaries selected for the London Courts by this Committee, it appoints them Probation Officers. and pays two-thirds of their salaries.

Outside London, the Justices appoint the officers and are responsible for carrying out the system. The Home Office makes general rules under the Act of 1907 with regard to appointments, dismissals, duties, reports, etc. and exercises a general supervision in which it is assisted by an Advisory Committee. It keeps in touch so far as possible with the provincial administration and obtains returns as to the officers, their remuneration, the number and classes of cases under their care. Visits are paid by its representatives to various provincial

centres and information is obtained and advice given at interviews with Justices, Justices' Clerks, local authorities and others. These efforts are useful, but the effective administration of the Act still depends mainly on the interest taken in its working by the Justices and the local authorities: and, while in some places it is administered with marked success, in others the results are less satisfactory. The work is hampered in some areas by the reluctance of local authorities to allow the necessary funds, small as these are, but this difficulty is likely to be removed by a government grant of half the cost. In populous centres there is always work for one or more full-time officers, and good men with adequate salaries can be appointed; and the same result has been obtained in more than one county by the Justices of several petty sessional districts agreeing in the appointment of one salaried officer to take the cases from all their courts; but the small boroughs and the sparsely populated county areas, where the cases suitable for probation are very few, still present a difficult problem.

The duties of the probation officer are to attend regularly the sittings of the court or courts, to see at the request of the court any prisoner before he or she is sentenced, to ascertain as far as he can the prisoner's history and character, and to advise the court as to whether the case is one for a probation order. When a prisoner is placed under his care by an order of the court, he arranges times and places where he is to see him, keeps constantly in touch with him, and helps him to keep straight by

kindly advice or by warning or in whatever way the circumstances demand. He is required to report regularly to the magistrates as to the probationer's conduct and progress, and much of the success of his work depends on the personal interest the magistrate takes in his cases. Each officer also makes an annual report to the Home Office. As a general rule a capable probation officer is fully employed, if in addition to attendance at court and making preliminary inquiries for the magistrates he has fifty or sixty cases under his supervision.

The cases placed on probation now number some 12,000 a year, and this is one of the chief factors in the recent large reduction in the number of convicted prisoners. The system is however still in its infancy, and it may be doubted whether many Justices have fully grasped its meaning and value. If in Kent 5½ per cent of cases tried summarily are put on probation, why should Bedfordshire and Cambridgeshire put on probation less than one-fifth per cent and Monmouthshire, none? If 7.5 is the proper proportion for Birkenhead, why is it only 1.8 in Liverpool? More than 15,000 persons are sent every year to prison for terms of a fortnight or less: and in the opinion of the Prison Commissioners many of these could with advantage have been placed on probation. On the other hand there is reason to fear that a good many children are put on probation, in some cases several times in succession, who really need the discipline and training of an Industrial or Reformatory School. The history of youths received in Borstal Institutions often shows that they have been time

after time either bound over on recognizances or placed on probation, when it should have become plain that this course was ineffective, and that committal to a school would have given the offender an earlier and a better chance. It may be laid down as a general rule that, if probation has failed once, a strong case must be made before it is applied a second time, and that even for a first offence it is unlikely to succeed if the home circumstances of a boy or girl are hopelessly bad. The Home Office has in successive circulars called the attention of Justices to this matter and endeavoured to guide them in what is admittedly a difficult exercise of discretion, and some pertinent remarks on the subject are contained in the Second Report of the Children's Branch of the Home Office.*

There are various other duties in relation to children falling on the Home Office which can only be mentioned. The Places of Detention, to which children under sixteen are committed on remand if they cannot be released on bail, and which also receive some children under short sentences of detention, have to be inspected, and the government grant of half the cost of their maintenance has to be distributed: orphanages and other voluntary homes for children are from time to time inspected if what appears to be a bona fide complaint of their management is received: and proposals for legislation on cruelty to children, on assaults on young girls and on the adoption of children come within its province. The employment of children will be discussed in a later chapter.

* Stationery Office Publication, 1924, Part I, particularly page 9.

Chapter X

ALIENS

Admission, Supervision and Deportation of Aliens.

The policy of admitting or excluding aliens has for many centuries been a matter of controversy in English politics. Parliament repeatedly imposed stringent restrictions: but Plantagenet and Tudor monarchs claimed a prerogative right to exclude or to admit, and when they needed loans from Hanseatic merchants or Lombard moneylenders to carry on their wars, found reasons not only for their admission but for the grant of special privileges. In the eighteenth century the right to exclude had fallen into abeyance, and aliens enjoyed entire freedom,* until, as we have already seen, the outbreak of war with the French Convention led Parliament to intervene. In 1793 Grenville's Act was passed which contained restrictions similar in character to those imposed on aliens in 1914—differing from them indeed in only two prominent points, that their enforcement was left to the Magistrates, there being then no organized police to undertake the duty, and that the return of an expelled alien rendered him liable on his first conviction to transportation, and, if he returned a second time, to capital punishment. These re-

* May, *Const. History*, II, 158.

strictions, at first only temporary, were re-enacted from time to time during the war: but after Waterloo, when peace was restored and English policy was largely controlled by *laissez faire* doctrines, milder requirements were gradually substituted * and even these fell into desuetude.

In the last years of the nineteenth century the alien problem again became acute owing to the large numbers of aliens from Eastern Europe who had settled in East London and in other populous centres. Their competition lowered the wages in some of the unorganized trades to starvation point, and their habits had a demoralizing effect in the crowded areas in which they settled. In spite of strong opposition the Aliens Act of 1905 was passed, and the Home Office had somewhat reluctantly to accept the burden of carrying out its imperfect provisions.

Whatever opinion may be held of the merits or demerits of the policy of this Act, it was from the administrative point of view one of the worst ever passed. The limitation of the control to vessels carrying more than twenty passengers and to those passengers only who travelled steerage, opened very wide doors for the admission of undesirables: and even where the Aliens Officers found good reason to refuse leave to land, their decisions were constantly over-ridden by the statutory appeal boards in a way that made effective enforcement of the restrictions almost impossible. Yet for nine years the Home Office struggled to prevent the Act of Parliament being reduced to a farce, and

* By Acts of 1816, 1826 and 1836.

undoubtedly some effect was produced in the direction of stopping the mass immigration of aliens, however easy it was for individual undesirables to evade the requirements.

It needed the outbreak of the great war to secure an effective law. The question of the treatment of aliens in the event of war had been considered by the Committee of Imperial Defence, and when war came a draft bill and a draft order in council were ready in the Home Office. The bill was introduced in the House of Commons at 3.30 p.m. on 5th August, passed both Houses that afternoon, and received the Royal assent by 7 p.m. The same afternoon the order in council was passed, and during the evening the necessary information and instructions were circulated to Police and Aliens Officers: so that from the morning of 6th August the initial restrictions began to operate and the basis was laid for the effective control of aliens which was maintained throughout the war.

In strong contrast to its promptitude in passing this bill, was the action of the House of Commons in dealing with the bill of 1918 which continued in force the powers given by the Act of 1914. The clauses proposed by the Home Office to strengthen the law were accepted readily, but the House spent some days in forcing on the government provisions of unnecessary severity aimed chiefly at those subjects of the late enemy countries who had been settled in England before the war. These provisions had afterwards to be carried out by the Home Office, and the Home Office had to bear the odium of harsh actions for which it was in no way responsible. This however

is a common experience of government departments. The important point was that assuming the policy of excluding aliens to be right, the Home Office now possessed a really effective instrument for preventing or regulating their admission and for dealing with those who might escape the watch kept at the ports. It may be taken as certain that but for the operation of the Aliens Acts and Orders hundreds of thousands of immigrants from Russia and from Central Europe would have crowded into England: and, if that had happened, certain goods might have been cheaper, but the whole social conditions of the country would have been altered substantially for the worse.

The existing regulations as to aliens are made by the Orders in Council under the two Acts of 1914 and 1919 on the advice of the Home Secretary. They fall under three heads, the Control of Immigration, Registration and Supervision by the Police, and Deportation.

The *Control of Immigration* is entrusted to the Chief Inspector who has his headquarters and assistants in the Home Office, and a staff of Immigration Officers at some fifteen ports and three air stations at which alone aliens are permitted to land. Every person landing has to show his papers to the Immigration Officer, who passes him at once if he is properly vouched as a British Subject, but who has to satisfy himself before passing any alien that he is qualified for admission under the regulations. Aliens coming for a temporary visit are admitted freely if they satisfy requirements as

to health and character and can show that they have sufficient means to support themselves and their dependents in this country. These conditions apply and are very strictly enforced in the case of persons coming with a view to permanent residence: in addition, if they come with a view to taking service with an employer, they are not admitted unless they have obtained previous permission from the Labour Department—a permission which is refused if the employment sought be likely to displace British workers. The effect is to close the door to thousands of refugees who would gladly have come to England from Eastern Europe.

A certain number of aliens inevitably succeed in eluding examination at the ports, some coming as stowaways, and some in foreign ships as members of the crew, who desert on arrival in England; but most of these aliens are detected afterwards by the police and deported. Names and particulars of all aliens landing are supplied to the Home Office and kept in a card index, and this Index of Passengers, worked in conjunction with the Central Register of Aliens mentioned below, enables very close touch to be kept with the movements of aliens both outwards and inwards. The statistics of aliens entering and leaving the country, collected and published by the Home Office every three months, show that the numbers leaving the country closely balance the numbers entering and that no substantial increase of the alien population is now going on.

The *Registration and Supervision* of resident aliens is a police duty carried out under Home

Office directions. Any alien who remains in this country longer than two months (or such shorter period as may on his admission be fixed by the Immigration Officer and notified by him to the police), is required to register with the police of the place where he takes up his residence; and after he has registered he must notify every change of residence to the police of the place which he is leaving and the place where he is going to reside, and he must also give notice of any absence from his residence of more than two months. A person who is a visitor only and has no residence, must notify all changes of address either direct to the police or to some respectable British subject (a banker, solicitor, hotel keeper or tourist agent) who undertakes to be responsible for informing the police at any moment where he is to be found. The police send notices of all registrations and of all changes of residence to the Home Office, and a complete card register called the Central Register of Aliens is kept in which every resident alien can be traced. The two months now allowed before registration becomes compulsory and the permission for visitors to notify changes of address to responsible British subjects, have removed the difficulties with French, American and other friendly foreign visitors, which caused great trouble so long as registration immediately on arrival and notification to the police of all movements were required: while the discretion to shorten the two months limit exercised by the Immigration Officer or by the Home Secretary affords a safeguard in the case of a former enemy alien or in any other case where there may be

doubt as to the intentions of a foreign visitor otherwise qualified for admission.

The Home Secretary retains unrestricted power to order the *deportation* of any undesirable alien. When an alien is guilty of crime this power is usually exercised at the instance of the court, the regulations providing for a recommendation to be made by the court for the expulsion of any convicted alien, but it is not confined to this class. It may be used to get rid of any undesirable, any alien for example who has succeeded in evading the control and landing illegally, or a foreign visitor remaining in this country beyond the permitted limit of time.

The Division of the Home Office charged with the central administration of Aliens Acts and Orders has to deal with a very great mass of work. The regulations, of which only the barest outline is given above, present many points on which a discretion has to be exercised by the department, and it is necessary to deal with innumerable questions, some submitted by the Immigration staff or by the Police, others raised by the troubled alien himself or by his friends in Parliament or elsewhere. The Home Secretary has often to give his attention not merely to the broad questions of policy or practice, but to minor details forced on him by political friends or opponents.

As other departments—the Foreign Office, the Colonial Office, the Board of Trade, and the Ministry of Labour—are concerned in matters relating to aliens, an inter-departmental committee consisting of representatives of these Offices and of the Police, with the head of the Aliens Division

as chairman, meets from time to time in the Home Office and settles questions in which all or more than one of these departments are concerned and so avoids prolonged interdepartmental correspondence. It is a cardinal rule of good administration that all minor differences between departments should be settled by personal conferences and that official letters between offices should be merely a record of the agreement.

Naturalization of Aliens.

The same division of the Home Office that administers the Aliens Acts and Orders also deals with questions of naturalization and nationality, matters governed by a separate series of statutes.

Up to the year 1844 the naturalization of foreigners was effected by private acts of Parliament, the earliest on record being an act by which in 1406 a Welshman became a naturalized English subject. The first general legislation on the subject was in 1609 when an Act of James I, without disturbing the practice of applying for naturalization by private bill, enacted that before the second reading of any such bill the applicant should take the oath of allegiance and receive the Lord's Supper, a requirement not repealed until 1826.

In the eighteenth century Parliament occasionally, in moments of generosity, passed a bill of more or less general application. Thus in the seventh year of Queen Anne, on the ground that "the increase of the people is a means of advancing the wealth and strength of the nation" and that "many

strangers of the protestant religion, out of a due consideration of the happy constitution of the government of this realm would be induced to transport themselves and their estates into the kingdom," Parliament enacted that all foreigners who should take the oath of allegiance, the oath repudiating the doctrine that persons excommunicated by the Pope ought to be murdered, the oath to support the protestant succession and the declaration against transubstantiation, and who had received the sacrament, should at once be deemed natural born British subjects; but this Act was repealed after three years, because "certain mischiefs and inconveniences had been found to follow from the same." Again in the twenty-sixth year of George II an act was passed admitting Jews on easy terms after three years residence, only to be repealed at the beginning of the next session.

These temporary acts imposed no duties on the Secretary of State. His interest in naturalization began when the House of Lords required by its standing orders that, before a private bill for naturalization could be passed, the applicant must produce a certificate of good character from the Secretary of State. This requirement still stands, but naturalization bills have become extremely rare since Parliament in 1844 conferred on the Home Secretary the power of naturalizing aliens.

The Naturalization Act of 1844, which was introduced by a private member, empowered the Home Secretary to grant certificates of naturalization to aliens of good character who had resided for at least five years in this country. Aliens so naturalized

possessed with a few exceptions all the rights of British subjects, and these exceptions disappeared in the Naturalization Act of 1870 which re-enacted the older Act with amendments. In 1907 a Committee under the chairmanship of Sir Kenelm Digby reviewed the whole law of British nationality and naturalization; and its recommendations, after approval by an Imperial Conference and negotiations with the Dominions, were embodied in the Act of 1914, of which the chief feature was an attempt to unify the laws of the whole empire on these subjects and to give the Dominions the power to grant imperial, as distinguished from local, naturalization.

The Act of 1914, as amended in 1918 and again in 1922, prescribes the conditions on which an alien can be naturalized in this country: (1) residence in the British Empire or service under the Crown for five years, including residence in the United Kingdom or service under the Crown for the twelve months immediately preceding the grant: (2) good character: (3) a working knowledge of English: (4) an intention to remain permanently in the United Kingdom or in the service of the Crown. If these conditions are fulfilled, the Home Secretary has it in his absolute discretion to grant or refuse the applicant the certificate which makes him a British subject for all purposes and in all places except his country of origin if he retains his old nationality by the law of that country. This act extends to the Dominions if they adopt it and to the rest of the Empire: and empowers the government of every Dominion which adopts it and of every other British possession to grant on

similar conditions certificates of naturalization having the same world-wide operation.

Before the war certificates under the older Act were granted practically to every one who satisfied the statutory conditions—to the number of about a thousand a year. No doubt it is right that every country should absorb into itself the good elements of the alien population permanently settled within its borders, as in the past England absorbed the Huguenot refugees from France: but before the war the statutory conditions were insufficient to limit naturalization to this class: and, though the Home Secretary had power to refuse the certificate in any case without giving a reason, all attempts on the part of the Home Office to exclude persons who had not identified themselves with English life and remained in sentiment really foreigners proved abortive. Now however public opinion supports a closer scrutiny, and the Home Office is allowed to take a stricter line with all applicants, while by the Act of 1918 the naturalization of former enemy aliens was, with some small exceptions, prohibited for ten years. Formerly no certificate once granted could be revoked, but a power to revoke a certificate obtained by fraud was given in 1914, and by the Act of 1918 disloyalty, crime or prolonged absence from the British dominions became grounds for revocation.

During the war many applications for naturalization were received from Germans long resident in this country but they were with very few exceptions rejected, and some of those granted were afterwards revoked. Many thousands of other

resident aliens applied, chiefly Russians and Poles, but save where there were special reasons for granting the privilege, their consideration was postponed indefinitely. After the war, men who had served in the armies of the allies were, in accordance with the government's pledge, given precedence and dealt with promptly, but the accumulation of other cases was so great that it has not yet been overtaken.

The grant of naturalization certificates is simpler work than some of the other problems arising from nationality law. Every country has its own law of nationality, some states basing it primarily on the place of birth, others on the parents' nationality, but in both classes with endless differences of detail and frequent legislative changes. The result is that some persons have double nationality (for instance English by birth, German by parentage), others have no nationality, and the nationality of others is in doubt. The Home Office finds itself constantly called on to advise, and for certain purposes to decide, on intricate legal questions as to whether a man is or is not an alien, and if an alien of what nationality; and the results are sometimes surprising, as when, early in the war, several American citizens whose families had been settled in the United States for a hundred years, found they were also Englishmen in virtue of their grandfathers' being British born, and were thus enabled to obtain commissions in the British army. The Home Secretary possesses a useful power of granting, in cases where there was a genuine doubt whether an applicant was a British subject or not

a certificate declaring his British nationality. British subjects born in France have by French law a right on reaching the age of twenty-one to choose between British and French nationality, and in such cases the French government requires a certificate recognizing his British nationality which has to be given by the Home Office.

Other questions of the same character arise with regard to the nationality of married women. Formerly the matter was simple, as practically all countries recognized the international rule that the nationality of a married woman follows that of her husband. But this rule has been broken into in several directions: and in this country, though the general principle is maintained, it is now provided that the Home Office may in time of war grant a certificate of British nationality to the British-born wife of an alien enemy, and that, when a British subject becomes de-naturalized, his British-born wife may by declaration retain her British nationality.

Further questions as to the position of married women are pending, in particular a demand that a British-born woman marrying an alien should have the option of remaining British: but the law cannot be further altered without the consent of the Dominions. The proposals for amending the law which finally took shape in the Act of 1914 were brought by the Home Office before the Imperial Conference of 1907 and again before the Conference of 1911; and at these conferences or by subsequent consultation on details, the provisions of the Act of 1914 were agreed to by the Dominions. The Dominions were also fully con-

sulted on the Home Office amendments in the Acts of 1918 and of 1922. Nationality and Naturalization have now become matters of imperial concern, and it is of the utmost importance that all changes of the law should carry with them the consent of all the leading members of the British Commonwealth.

workmen who held them to their tasks, or were driven into such factories as that described by a boy who appeared before the Sadler Committee in 1832—a factory where he had to work from five in the morning to seven at night, with only one break of half an hour, and where he was under the charge of three over-lookers one of whom was kept "on purpose to strap" the infant workers.

It needed fifty years of agitation, starting from the great outbreak of fever in the Radcliffe Mills in 1784, before Parliament was induced to provide the beginnings of an effective remedy for this state of things. Even when the full extent of the evil was known the demand for legislation long fell in stony places, partly because of the belief widely held that if children were forbidden to work under these conditions "they would only starve," but chiefly because of the prevalence of extreme *laissez-faire* doctrines, based on a perversion of Adam Smith's economic teaching. Even enlightened politicians imagined that it was the sole duty of the state to leave free play for the accumulation of wealth, however cruel and degrading the means by which it was produced and however inequitable its distribution.

The first attempt at legislative interference was "The Health and Morals of Apprentices Act 1802" passed by the elder Sir Robert Peel, which limited the working hours of apprentices to twelve a day, forbade their night employment, required lime-washing and ventilation, and insisted on their receiving one suit of clothing a year. The Act thus gave definite form to the existing obligation

of Justices and overseers to see that children whose apprenticeship they had sanctioned were properly employed, clothed and fed—an obligation clearly stated by Mr. Justice Grose in the Jouvaux case,* and almost invariably disregarded: but the act applied only to cotton and woollen mills where twenty persons or more were employed, and its provisions, except ventilation and whitewashing, applied only to apprentices. Even within these narrow limits it had the fatal defect of not providing effective means for its enforcement. The West Riding Justices were alone in putting it fully in force, and they went even beyond it in the conditions they required for apprenticeship: elsewhere it was a dead letter. The same fate from the same cause befell the Cotton Mills Act of 1819, which limited the hours of persons under sixteen to seventy-two a week exclusive of meal hours and forbade employment under the age of nine, and an Act of 1823 which contained the germ of the weekly half holiday.

It was the Parliament, elected in 1831 to pass the Reform Bill, which at last, led by Michael Sadler, took seriously in hand the factory problem. Sadler's Select Committee collected a mass of evidence which brought to light the appalling conditions of industrial employment: and when Sadler lost his seat in the first reformed Parliament Lord Ashley (afterwards Earl of Shaftesbury) took up his work. The bill which he introduced in 1833 was strongly opposed, and the House of Commons insisted on the appointment of Commissioners to visit the manufacturing districts and

* Hutchins & Harrison, "*History of Factory Legislation*," pp. 14, 15.

make further inquiries. The object of this appointment was to delay the bill, but the Home Office appears to have at last taken a serious interest in the matter, and Lord Melbourne quickened the proceedings of the Commissioners and at last insisted on their reporting within a week. The result of their report was that the Government took over the bill, and, though they eliminated the "ten hours day," they introduced provisions for the enforcement of the act by inspectors and thus made what was left effective and opened the way to future improvements.

The Act of 1833 applied with some exceptions to all textile factories, and extended to them provisions already nominally in force in cotton mills. Its chief features were:—

(1) The prohibition of the employment of children under nine (except in silk mills), and the restriction of the employment of children under thirteen to nine hours a day and forty-eight hours a week.

(2) the restriction of the employment of young persons (from thirteen to eighteen) to twelve hours a day and sixty-nine hours a week, and the prohibition of their night employment.

(3) certain provisions for the education of children, which could not however be of much use so long as they had to work eight or nine hours a day.

(4) the appointment of factory inspectors with extensive powers.

The creation of full-time inspectors, appointed and paid by the government, was a new departure in industrial legislation and one of far reaching importance: but it is curious that this revolutionary step was introduced by a government which detested interference with individual liberty, and that it was at first violently denounced by the protagonists of factory reform who imagined it was intended for the protection of the employers. Previous legislation had failed for want of means to enforce it: henceforward the inspectors not only enforced the law but by their reports led the way to practicable improvements.

The next advance was made by the Act of 1844 which, while lowering the age of employment to eight, introduced the half-time system for children between eight and thirteen, and extended to women the prohibition of night labour and the limit of twelve hours a day. It also introduced the reporting of accidents and for the first time required the fencing of dangerous machinery. In 1847 the "Ten Hours Bill," which had long been demanded, limited the employment of women and young persons to fifty-eight hours a week—a limitation made really effective when in 1850 definite hours were fixed for the beginning and end of employment and for meal times. In practice this reduction of hours applied to men as well as to women in the factories where both men and women were employed, and this meant a ten hours day for men in almost all textile factories.

Up to this point the legislation applied only to textile factories: but in the years from 1860 to

only consolidates but strengthens and greatly simplifies the law.

The expansion of the law, which now applies to more than 280,000 factories and workshops, has been accompanied by corresponding increase of the inspectorate. Instead of the four inspectors appointed after the passing of Lord Ashley's Act, there are now 200 of whom 31 are women. At the head there is the Chief Inspector with three deputies. The country is then divided into ten divisions each under a Superintending Inspector and his deputy, and into eighty-three districts each with a district inspector who if his district is a large or difficult one may have one or more junior or assistant inspectors. There are also a number of technical inspectors—five electrical, five engineering and four medical, and, in the textile centres, five inspectors of textile particulars. There are also some 1,800 "certifying surgeons," part-time officers who make reports on the more serious accidents and cases of industrial disease, certify young persons as fit for factory work, and examine periodically the persons employed in certain dangerous trades.

The most interesting feature in the recent history of the Inspectorate is the place held by women inspectors. There are one or two earlier instances of individual women inspectors in public offices, but the Factory Department was the first to employ women inspectors as an organized staff. Four were appointed by Mr. Asquith in the years 1893 and 1894, and they were gradually increased in number till there were 21 in 1920, who as a separate body did much excellent work. The co-

ordination however of the work of the men and women inspectors so long as they remained separate bodies presented very great difficulties, and in 1921 a further development became necessary: the two staffs were amalgamated, one woman was appointed Deputy Chief Inspector and two others Superintendents of divisions, and now in two of the divisions men district inspectors report to the women superintending inspectors, just as in the other divisions the women inspectors report to the men superintending inspectors. This arrangement, which has been accepted cordially by both men and women, marks an important advance in organization.

The members of the staff carry on the regular inspection of all places within the acts, enforce the provisions of the acts and regulations by personal conference, warning, and, if necessary, prosecution (the Inspectors themselves prosecute, rarely requiring legal assistance), advise occupiers and managers as to safety and health requirements, report on accidents, attend inquests, keep registers of the various classes of factories and workshops, and carry out all the ordinary routine duties of the department. The superintending inspectors, in addition to organizing the work of their staff and taking a share in inspection, keep in touch with the associations of employers and with workmen's unions and often have to preside over conferences called to concert the best means of carrying out the statutory requirements or to prepare the way for, or to bring into operation, new regulations. The whole system is under the control of the Chief

Inspector and his three deputies who being stationed in the Home Office are in constant touch with the Industrial Division and the heads of the Department.*

Apart from his general responsibility for the work of the Factory Inspectorate the Home Secretary has numerous specific duties under the Factory Acts which are carried out by the Industrial Division acting in concert with the Chief Inspector. These include the appointment of inspectors from candidates recommended by a Selection Board and tested by competitive examination, the approval of promotions in the staff recommended by the Chief Inspector, and the issue of instructions for the several classes of inspectors and for certifying surgeons. He has also important powers of a legislative character. Of these the most important is that already mentioned, the making of regulations for dangerous trades: these are based on the practical experience of inspectors and the technical knowledge of experts and are settled after consultation with employers and workmen and after full consideration of all objections. The codes so established cover some thirty industries and processes which are dangerous either from the risk of poisoning or of disease or from the special risk of accident: including, for instance, various lead processes, wool-sorting, ship-building, electricity generating stations and chemical works. The Home

* A good account of the history and the present organization of the Factory staff is given in the volume on "Factory Inspection," published by the International Labour Bureau (Geneva, 1923), pp. 14-32.

Secretary also makes "special orders" under some thirty-three sections or sub-sections of the act—some of them granting exceptions like those allowing night work in certain cases; others imposing new conditions as in the cleaning and preserving of fruit; and others extending the operation of certain provisions of the Act, as for instance the "particulars section" which requires piece workers in textile trades to be supplied in writing with the particulars on which their wages depend, a section which has been extended to thirty other industries. Regulations and Special Orders have to be laid before Parliament and could be disallowed by a vote of either House—but that has never happened. There are a number of other matters to be determined by the Home Secretary by orders which do not come before Parliament; the most important of these are the Welfare Orders under the Act of 1916, some fifteen of which have been made, requiring the provision of such things as drinking water, mess-rooms, washing accommodation, protective clothing, first aid appliances and ambulances. Finally there is the parliamentary work, including particularly the consideration and drafting of new bills relating to industrial works, on which not only the Chief Inspector and the most experienced experts on his staff and, on some points, the Ministry of Health have to be consulted, but also the representatives of the employers and workpeople and occasionally the local authorities. Probably no departmental bill has ever had more labour or a greater variety of technical knowledge devoted to it than the Factory Bill

now waiting final approval before introduction in the House of Commons.

Since the end of the war the Home Office has taken a share in the scientific research into the causes and conditions of industrial fatigue. The Industrial Division has been represented on the Industrial Fatigue Research Board, has given the expert services of the Factory Inspectors to the Board's numerous committees, and has helped in the preparation of its twenty-eight special reports.

The Division has also taken a large part in the work of the International Labour Organization which forms an integral part of the League of Nations. The first draft of the scheme of the Labour Organization, afterwards amended and embodied in Part XIII of the Versailles Treaty, was actually prepared in the Home Office; and to the numerous conferences which that Organization has held on industrial questions the Home Office has sent Ministers, Administrative Officers and Factory Inspectors as delegates or as technical advisers. These conferences have agreed to nine conventions on such subjects as weekly rest, night work of women, employment of women in lead processes, use of white lead in paints, etc., and has issued five "recommendations" on kindred subjects. In preparation for these conferences, replies to the elaborate *questionnaires* of the International Labour Bureau on each subject have to be prepared; arrangements have to be made for the ratifying of the conventions and for giving effect to ratified conventions and to recommendations; and at every

stage frequent consultations are held with employers and workers.

Two institutions are maintained by the Home Office in connection with its factory work. One is an "industrial museum" in London for the exhibition mainly of safety appliances, which was planned after visits to similar museums on the continent. The building had just been completed at a cost of £25,000 when the war broke out: and it was used during the war as a hostel and canteen for soldiers on leave. It can now be made available for its original purpose as soon as the Treasury allow the necessary funds. The other is the Anthrax Disinfecting Station at Liverpool erected at a cost of £113,000, on the recommendation of a departmental committee on anthrax, for the disinfection of consignments of wool and hair coming from countries where anthrax is prevalent. At present only East India goat hair, and Egyptian wool and hair are disinfected, but the results are excellent, the station already pays its running costs, and its operations ought soon to be extended to other infected materials.

Shops

The relation of the Home Office to the Shops Acts is different from its relation to the Factory Acts. Under the Shops Acts the local authority makes orders, appoints inspectors and attends to all the details of administration: the Home Secretary is the "central authority" and his functions are confined to confirming and revoking

orders, making regulations for procedure, holding inquiries, and the general supervision which results from his parliamentary responsibility for legislation.

For many years a strong movement had been going on for the voluntary early closing of shops: but the wishes of the great majority of shopkeepers in a town or district were constantly being defeated by the selfishness of a few who were ready to steal the trade of the shops that agreed to close. At last the legislature intervened, though at first very feebly. An Act passed in 1886 and made permanent in 1892 restricted the employment of young persons under eighteen to 74 hours a week including meal times: another Act in 1899 required that women shop assistants should have seats, one seat for every three assistants: and at last in 1904 an Act was passed which enabled orders to be made for early closing, at 7 p.m. on five days and 1 p.m. on the sixth. The making of these orders was however subject to an elaborate procedure—the establishment of a prima facie case, the decision of the local authority to make the order, the approval of two-thirds of the shopkeepers affected, confirmation by the Home Secretary, and submission to Parliament with power to either House to disallow.

A good many orders were made, but the agitation for better terms continued, and in 1911, Mr. Churchill, then Home Secretary, attempted a much more comprehensive bill. Some of his proposals excited undeserved opposition, and all that survive in the Shops Act of 1912 are a consolidation of the previous acts, an extension of their provisions to places other than shops where goods are sold,

the requirement of proper meal times, and a universal weekly half holiday for shop assistants.

Then came the war, and the need of economizing fuel and labour led to the enactment of a Defence of the Realm Regulation under which the Home Secretary ordered the general closing of shops, subject to some exceptions, at 8 o'clock on five days and 9 on Saturdays. This order proved so beneficial that it was made statutory and enforceable by the local authority by the Shops (Early Closing) Act of 1920. A violent agitation by theatres and picture houses for permission to sell chocolates after 8 p.m. and an equally strong opposition from sweet shops to the grant of any special advantages to these places led to a compromise in the following year by which chocolates and sweets were allowed to be sold up to 9.30 p.m. on five days and to 10 p.m. on Saturdays!

There is no doubt that this Act has proved a great boon, shortening the hours of labour without curtailing the total trade; and by exercising the power to suspend its operation temporarily the Home Office is able to provide for times of exceptional pressure, particularly the few days immediately before Christmas. Many local orders under the Act of 1912 continue to be made for the further reduction of hours in particular places and trades: these are confirmed and laid before Parliament by the Home Office, but their adoption is not a little hampered by the cumbrous preliminary procedure.

Employment of Children

In other industries than factories and workshops the legislature has interfered with the employment of children: and the prohibition of employment below the age of 14 is now almost universal. In coal mines, where the underground employment of boys under ten and of girls had been prohibited in 1842, the age for boys was raised to 14 by the Coal Mines Act of 1911: and in 1920, as one of the results of the Washington Conference, employment under 14 was forbidden in all industrial undertakings. All other occupations come within the prohibitions contained in the Education Act 1921, which forbid the employment of children under 12 absolutely and of children above that age during school hours: while the casual employment of school children on Sundays, holidays and before and after school hours is subject to restrictions, first imposed in 1903 as the result of a Home Office inquiry, and now embodied in the Education Act. Local education authorities may by byelaw restrict such casual employment to suitable occupations, such as running messages, or delivering newspapers, and may further limit the hours. All such byelaws have to be approved by the Home Secretary who has power to order a local inquiry if objections are taken to the byelaws by persons affected. Some 300 sets of byelaws have now been made, most of them following models framed by the Home Office with such variations in detail as are justified by local conditions.

The Act of 1903 also dealt with Street Trading

by young persons—a matter which had often previously come before the Home Office, as it had long been recognized that boys engaged in selling newspapers and other trading in the streets were exposed to peculiarly injurious influences, and a good many local authorities had obtained power to deal with the matter by local acts of parliament. As the law now stands, children under fourteen are prohibited from engaging in street trading, and Borough and County Councils have power to make byelaws regulating street trading between fourteen and sixteen, and confining the occupation to boys holding licences which can be forfeited in the event of misconduct. These byelaws which have to be approved by the Home Office, and which usually raise the age to 15 for boys and 16 for girls, are now in force in 250 districts, but it would be well if street trading could be entirely forbidden to young persons and left as a last resource for older men who have failed in other occupations.

Truck Acts

Truck was the name given to the practice once prevalent by which an employer paid the wages of his workpeople in goods or required them to purchase food and other necessaries from a shop kept by him or in the profits of which he was interested—a practice which inevitably led to gross abuses in the way both of overcharging and of supplying inferior goods. The Truck Act of 1831 attempted to stop this practice in a large number of trades by requiring that, subject to certain

defined exceptions, all wages should be paid in full in coin of the realm. The Home Office had no administrative powers under this act which was to be enforced by summary proceedings on complaint of the injured person; and as the injured person was always an employee and often a woman or child, the enforcement of the act suffered from the same weakness as that of the earlier Factory Acts. It only became fully effective in factories and workshops when Parliament in 1887 charged the Inspectors of Factories with the duty of enforcing it. This was done by a bill introduced by Mr. Bradlaugh which at the same time extended the principle of the older act to every person working under contract of service. In 1896 the Home Secretary procured the passing of a further Truck Act dealing with deductions from wages for fines, for damaged goods, and for materials supplied to the workman. These had not hitherto come within the Act and the deductions made were sometimes excessive: all such deductions were now prohibited except on written contract and under stringent conditions: and new powers were given to the Factory Inspectors to enable them to deal with irregularities. The enforcement of the Truck Acts in all places within their jurisdiction is now part of the regular duty of the Factory Inspectors, acting under Home Office instructions.

Analogous to the Truck Acts are the provisions of the Checkweighing Act of 1919, which provides for the checking by weight or measure of work done by men engaged in iron or steel production, in loading or unloading vessels, in getting chalk or

limestone from quarries and in the manufacture of cement or lime. The enforcement of this Act is left to the men's unions: but the Home Secretary has power to extend the Act to other industries, and to add to or vary the regulations contained in the Act.

Workmen's Compensation

The Home Secretary used to be responsible for legislation on the subject of employers' liability, and both before and after the passing of the Employers' Liability Act of 1880, he had frequently to consider the defects of the law: but the Home Office had no administrative duties in this matter until the passing of the Workmen's Compensation Act of 1897.

The Workmen's Compensation Act of 1897 introduced a new principle. Until then employers liability was a matter of damages for those accidents which were held to be directly or indirectly the fault of the employer. Workmen's compensation is in effect a measure of compulsory insurance at the cost of the employer against accidents and the diseases of occupation.

The real author of this Act was Mr. Joseph Chamberlain, though the Home Secretary undertook somewhat reluctantly the parliamentary charge of the measure, and the department had to accept the statutory duties imposed upon it, which at first were not very onerous, consisting only of the appointment and payment of the medical referees and the collection of an annual volume of statistics.

But in 1906 the position was altered: the Home Office had now acquired experience in the working of the measure and of its defects, and the comprehensive new Act of which Sir Herbert Samuel, as Parliamentary Under Secretary, took charge was framed in the department. In particular the provisions of Section 8, which extended the Act to occupational diseases, was based on the French law, and was elaborated after long discussion by a Home Office departmental committee. Subsequent amending acts have also been the result of inquiries and negotiations conducted by the Home Office, one in 1909 to carry out an agreement with the French Government for securing compensation to British workmen employed in France, two in 1917 and 1919 providing temporary war additions to compensation, and one in 1918 making special provision for silicosis. In 1919 a Departmental Committee appointed by the Home Secretary made an exhaustive inquiry into the working of the Acts, and many of its recommendations were embodied in the Amending Act of 1923.

The statutory duties of the Home Office under these acts are numerous. The Home Secretary makes orders which bring occupational diseases within the Act (many such orders have been made): orders extending the act with modifications to "share fishermen" and to British aircraft outside Great Britain: rules or regulations as to the duties, procedure, certificates and fees of certifying and other surgeons and of medical referees: regulations as to representative committees, and regulations as to the returns to be made by employers.

He appoints surgeons and medical referees: has power to detain ships against whose owners claims are pending: prescribes the form of accident registers and the particulars to be entered: and has various powers with regard to arbitration.

Apart from the exercise of these statutory powers, much work has to be done by the department to promote the beneficial working of the Act. Thus in 1919, after long negotiations, arrangements were made by the Home Office which relieved employers from any additional liability in respect of the employment of men disabled in the war; and in 1923 effect was given to one of the recommendations of the Departmental Committee by means of an agreement negotiated by the Home Office with the Accident Insurance Companies for the limitation of the rates of insurance.* From the returns received from employers and from insurance companies, statistics are compiled and are published with an annual report.

There are no inspectors or special officers appointed under the Act and the whole of the administrative work is done by the Industrial Division of the Home Office.

* Employers' Liability Insurance: Undertaking given by the Accident Offices Association, Parl. paper (1923), Cmd. 1891.

Chapter XII

INTOXICATING LIQUORS AND DANGEROUS DRUGS

Intoxicating Liquors

The Home Office had until recent years no administrative duties in connection with the sale of intoxicating liquors. The trade in drink has since the year 1551 been under the supervision of the magistrates with power to license or to close retail houses; and, as the chief source of excise revenue, it has also been subject to excise licences and excise regulations: but these matters remained outside the purview of the Home Office except when Home Secretaries had to take charge of legislation on this subject. Mr. Bruce, afterwards [illegible] Aberdare, Mr. Gladstone's Home Secretary, after the failure of his first effort at temperance legislation in 1871, succeeded in the following year in passing the Licensing Act of 1872 which imposed considerable restrictions on the publican's trade, particularly in the matter of the hours for the sale of drink—restrictions which were slightly modified when Mr. Disraeli's government, aided not a little by the votes of the trade, came into office in 1874. Thus far no statutory duty was imposed on the Home Office except that of prescribing the forms of licence, but as time went on the Home Secretary

came to be more and more frequently consulted by licensing authorities throughout the country.

In 1902 Mr. Ritchie passed a Licensing Act which *inter alia* increased the stringency of the law against drunkenness and for the first time brought clubs within the scope of the licensing law by requiring them to be registered. Two years later Mr. Akers Douglas, now Lord Chilston, passed the Licensing Act of 1904, which established a scheme for the reduction of the number of public houses with compensation out of funds raised from the licensed trade. Under this scheme superfluous houses were to be gradually extinguished by the combined action of the "Renewal Authorities" (the Licensing Justices) and the "Compensation Authorities" (County Quarter Sessions or Borough Justices, or Committees to which either body might delegate its powers): and the Home Office was made the Central Authority for the administration of the Act, and was given the duty of making rules for the procedure of the local authorities, for the management of the Compensation Funds, for borrowing by Compensation Authorities, and generally "for carrying the Act into effect." Home Office approval was also required for all loans and for the appointment and remuneration of officers: and in order that the act might be carried out effectively and with some degree of uniformity, the Home Secretary found himself compelled to give advice and guidance to the local authorities by the issue of general circulars and by replying individually to the numerous questions raised by them. Though work under the Act suffered some

interruption from the war, the number of premises with on-licences has in nineteen years been reduced from 99,478 to about 81,000, and this reduction includes some 13,900 cases dealt with under the Act of 1904 in which compensation has been paid at rates varying from an average of £614 in 1905 to an average of £1,901 in 1923.

These two measures, the registration of clubs and the extinction of public houses with compensation, added a new branch to the work of the Home Office, and involved the publication of annual statistics and an annual report which supply most of the information available for estimating from year to year the sobriety or insobriety of the country.

During the war the extensive control which had in the national interests to be imposed on the drink trade was entrusted to the "Central Control Board (Liquor Traffic)," an independent body appointed by the Ministry of Munitions and containing a representative of the Home Office who brought to its aid all the experience of the department. After the end of the war, when the Board was dissolved and many of the restrictions it had imposed were withdrawn, two legacies were left to the Home Office—the shortening and rearranging of the hours for the sale of drink, and the schemes for "State Management Districts." The former was dealt with by direct legislation in the Licensing Act of 1921, but the Act left considerable discretion as regards hours to the Licensing Justices, and the Home Office were faced with the difficult problems arising from the great variations exhibited

in the exercise of that discretion. By the same act the two English State Management Districts (Carlisle and Enfield) were transferred to the Secretary of State, and the property powers and liabilities of the Board in England were vested in him. The properties of the Enfield scheme, a purely war enterprise, were disposed of in 1923: but the Carlisle scheme was continued and is administered by the Home Office with the assistance of an advisory committee, the "State Management Council," on which three experienced members of the trade happily consented to serve. Thus the Home Office is now, in time of peace, carrying on the interesting experiment of a liquor monopoly owned and managed by the State. The business includes the running of a brewery, the blending of spirits and the control of nearly 200 premises, including hotels, restaurants, and public houses, in Carlisle and an adjoining county area. Many more than 200 premises were originally acquired by the board, but sweeping reductions were made both in retail premises and in breweries; and the advances made from the Exchequer for the purposes of the undertaking are being reduced at a rate of upwards of £80,000 a year. Up to now the results of the enterprise appear to be good both from the social and from the economic standpoint.

The same cannot be said of the attempts made by the State to intervene for the reform of the habitual drunkard. An Act passed so long ago as 1879 provided for the establishment of Retreats, owned privately, licensed by local authorities, and

inspected by the Home Office, in which inebriates who voluntarily applied for admission could be detained for a limited time. There are now four such retreats for women and one for men, and they may be described as partially successful.

A more ambitious experiment was made in 1898 on the recommendation of a Committee of which Mr. Lloyd Wharton, M.P. was Chairman. The Inebriates Act of that Session provided for the establishment of Inebriate Reformatories to which habitual drunkards could be sent if they were convicted at Assizes or Quarter Sessions of serious offences perpetrated under the influence of drink, or were summarily convicted more than three times of drunkenness. There were to be two classes of reformatories under the Act—"Certified Reformatories," established by County or Borough Councils or supported by contributions from them, to which the summarily convicted drunkards might be sent, and "State Reformatories" established by the Home Office and intended for inebriates of a violent or dangerous character. Reformatories of both classes were established and every effort was made to ensure their success: but, so far as the cure of inebriety was concerned, the experiment ended in complete failure and the closure of all the Reformatories. The experiment was however one that had to be made, and the experience gained as to the nature of inveterate inebriety in men of a criminal type is of permanent value. It must now be taken as proved that compulsory deprivation of drink is in itself no cure for drunkenness. An inebriate who really desires to

reform may with some hope of success submit to detention in a well-managed retreat: but a drunkard who is so degraded as to need committal against his will, even if detained and deprived of drink for so long a period as three years, returns sooner or later, usually sooner, to his old habit. On the other hand it is now clear that many of the most hopeless class of drunkards are in fact weak-minded persons, who can be, and ought to be, dealt with under the Mental Deficiency Act.

Dangerous Drugs

The connection of the Home Office with the control of Dangerous Drugs began from the International Opium Convention of 1912. Up till then the Privy Council Office had been charged with the government responsibilities under the Pharmacy Act with regard to poisons including "opium and preparations of opium and of poppies": but an inter-departmental committee, appointed to concert the measures for carrying out the Opium Convention, pressed the Home Office to take charge of the administration of the new regulations, and ultimately, when it became clear that their execution would require the constant services of the police, the Home Office reluctantly accepted the duty.

Meantime the outbreak of the war had interrupted the proceedings of this committee and delayed the legislation required to give effect to the Convention. But the war also brought home the need for immediate action—opium was being smuggled on British ships, cocaine was being secretly imported

and supplied to soldiers, and was doing immense harm both moral and physical—and it became necessary first to prohibit by royal proclamation the importation except under licence of opium and cocaine, and later to impose the drastic restrictions contained in Defence of the Realm Regulation 40B. The Home Office took charge of the enforcement of this regulation: and, when the war was over, its main provisions were embodied in the Dangerous Drugs Act of 1920, which was passed in order to give full effect to the International Convention of 1912.

No trade or manufacture, except perhaps the manufacture of explosives, has ever been placed, or ever needed to be placed, under such strict conditions as those imposed on the trade in opium and the other drugs to which the Act of 1920 applies. That Act prohibits absolutely the import, export, manufacture, sale or possession of opium prepared for smoking: and with respect to raw opium and to morphine, cocaine, heroin, and similar drugs, it empowers and directs the Home Secretary to make regulations which aim at putting them at every stage under complete control. This control is exercised by a system of Home Office licences: no one can without a licence import, export or manufacture these drugs: no one, except a doctor, chemist or other authorized person, can without a licence sell or supply, or (save in small quantities on proper medical prescriptions) procure or possess them. The import and export licences are given only for specific consignments; those for manufacture, sale, supply, procuring or possession

may be either a general authority to a named individual or an authority limited to specific quantities. Manufacturers and dealers are required to keep exact records of all transactions, which are open at all times to the Home Office Inspectors. Two Inspectors have been appointed, and the total number of licences issued exceeds 5,000 a year. The penalties imposed by the Act of 1920 were severe, but, as they proved insufficient to suppress an illicit trade which brought huge profits, an amending Act was passed in 1923 which so increased the penalties that an offence may now be punished by ten years penal servitude or a fine of £1,000 or both, while forfeiture of the drugs follows every conviction. In one case an offender has already been sentenced to three years penal servitude and his consignments of opium of the value of £9,000 have been forfeited.

The aim of the regulations, so far as this country is concerned, is absolutely to restrict the use of the drugs to necessary medical purposes—which it does, not only by forbidding retail sales to the public except on the signed prescriptions of qualified medical men or dentists or veterinary surgeons, but also by restricting the manufacture or import and the distribution to the quantities necessary for the medical service of the country or for the legitimate export trade. By the steady enforcement of the Act and the regulations (there were 295 prosecutions in 1923), this difficult task appears to be within reach of accomplishment.

The international problem is much more difficult. The Peace Treaty of Versailles contained a clause

requiring the signatory powers to ratify the Convention of 1912 which pledges the governments to international co-operation, and this brought Germany, the chief opponent of the Convention, into line with the other great powers. The Treaty also provided that the League of Nations should supervise the arrangements for carrying out the Convention, and at its first meeting the League decided, on the motion of the British representative, to appoint a Standing Advisory Committee to deal with the matter. Not only the Home Office, but the Foreign Office and the Colonial Office, were intimately concerned in the questions which would come before this Advisory Committee; and, as they could not all be separately represented, it was agreed that the British representative should be one of the Assistant Under Secretaries of State of the Home Office and that the Home Office should undertake the task of co-ordinating and representing the views of all the departments. At the meetings of the Advisory Committee the policy urged by the British representative on behalf of the government, and supported by the United States who take a keen interest in the matter, has been to endeavour to arrive at an estimate of the quantity of each drug required for medical use in each country and to limit the manufacture or importation to that amount. The scheme presents great difficulties which are increased by the reluctance of some countries to co-operate in it, and by the fact that opium is now grown in large quantities in China and that it has hitherto proved impracticable to stop its being smuggled into Hong Kong and

Singapore: and further meetings of the Advisory Committee and of the League will be necessary before these difficulties can be solved or a better scheme devised.* This work has expanded so quickly that it occupies a great part of the time of the Assistant Under Secretary who attends the meetings at Geneva and has rendered necessary the addition of an administrative officer to the staff.

* Since this was written, the Second Opium Conference at Geneva has adopted a scheme which is based on and partially carries out the British proposals. This scheme had the support of the United States representative, though on other grounds he withdrew before the end of the conference.

Chapter XIII

PUBLIC SAFETY: EXPLOSIVES, FIREARMS, FIRES, ETC.

THE Home Secretary is the recognized guardian of the public safety. Some safety measures fall, it is true, to other departments as being closely bound up with their general administration, the Ministry of Transport for instance dealing with the dangers of railways and motor car traffic: and some of those safety measures which come within the Home Secretary's powers have already been discussed. But there remain several subjects of Home Office administration which can be conveniently grouped under this head.

Explosives

One of the most obvious of public dangers is that arising from the misuse or careless handling of explosives. This had been recognized long before the Home Office came into existence, but was met, so far as it was met at all, either by direct prohibitions or by conferring powers on the local authorities An Act of William III forbade the firing of squibs or "serpents" in the streets, and in the eighteenth century laws were passed requiring powder mills to be licenced by the Justices in Quarter Sessions. With the coming however of high explosives the

earlier enactments proved to be wholly inadequate. In 1869, while the local authorities of Newcastle were engaged in destroying a confiscated consignment of nitro-glycerine on the Town Moor, an explosion occurred which killed the Sheriff, the Town Surveyor and five others, and this led immediately to the passing of the Nitro-Glycerine Act of 1869. Five years later an even more sensational explosion occurred in London. While a barge loaded with four tons of gunpowder and a quantity of benzoline was passing a bridge over the canal in Regent's Park, the gunpowder exploded—probably vapour from the benzoline had been ignited by the cabin fire or by a bargee lighting his pipe—the bridge, the barge and the crew of the barge went into the air, and damage was done to the neighbouring houses for which some £64,000 of compensation had to be paid. In the following session Sir Richard Cross as Home Secretary carried through Parliament the Explosives Act of 1875, a measure so complete that it has worked for nearly fifty years without any amendment until a small addition was made to it in 1923. Probably no trade or manufacture had ever been subjected to such stringent conditions as this act imposed, and yet its provisions are so elastic that, by means of Orders in Council or Home Secretary's orders, it is possible to dispense with its requirements where they are unnecessary or to provide new safeguards against new developments of danger.

It begins by dealing in detail with gunpowder only, requiring factories and large magazines to be licensed by the Home Secretary, stores containing

not more than two tons of gunpowder to be licensed by the local authority, and premises on which small quantities are kept to be registered with the local authority. For each of these—factories, magazines, stores and registered premises—general rules are laid down by the Act which deal with every point of detail in their position, construction, methods of storage, fire appliances, etc., but which may be modified by the Home Office to meet altered conditions. Special rules made by the owners for the conduct of managers and workmen are subject to Home Office sanction: the packing of gunpowder for conveyance is regulated by statutory rules which may be, and have been, modified by him: and the conveyance of gunpowder on roads and its loading and unloading in wharves has to conform to Home Office byelaws.

The Act, having dealt in thirty-five long sections with gunpowder, proceeds to apply these provisions with modifications to all other explosives. Some of the modifications are set out in the Act itself, but for the most part they are left to be determined by Orders in Council or by orders of the Home Secretary. Such explosives, with a few exceptions, cannot be imported without a Home Office licence: and power is given to prohibit the manufacture, importation or use of any specially dangerous explosive either absolutely or subject to such special restrictions as may be imposed by Home Office licence—a power which has been extensively used. Altogether some twenty Orders in Council have been made, some of them necessarily very elaborate.

The Act is enforced by a Chief Inspector and four other Inspectors who form the Explosives Branch of the Home Office. In addition to exercising the statutory powers conferred on them by the Act, and carrying out regular inspections, they are the Home Secretary's expert advisers in the framing of the Orders in Council (which are all made on his recommendation), in the exercise generally of his statutory powers, and on all questions relating to explosives. The Home Secretary may order a formal inquiry into any serious explosion to be held by one of the Inspectors, and in holding these inquiries the Inspectors have the powers of a court of law. The reports of such inquiries are usually published, and these reports, as well as the Chief Inspector's annual report, contain recommendations which are often of much value to the industry.

The Inspectors also undertake duties outside the Act. They are frequently consulted by the War Office and other Departments; and they advise the Police and the Director of Public Prosecutions in cases of the unlawful use or possession of explosives, and appear in such cases as expert witnesses. The Police bring to them bombs and infernal machines for examination, and they have a station in the Duck Island in St. James's Park so constructed that bombs can be opened there without danger to the person engaged in the operation, to the public or to the ducks.

Firearms

For a good many years before the war there had been a strong case for strengthening the law as to the possession of firearms. The Pistols Act of 1903 had little effect, and it remained easy for an angry man to buy a pistol for the purpose of murder or for a drunken or crazy person to indulge in wild shooting to the risk of his neighbours' lives. A system of strict control of firearms became necessary during the war and was established by regulations under the Defence of the Realm Act: and before these expired the Firearms Act of 1920 was passed and brought into force. One of its first effects was that many old service weapons and charged shells and cartridges were given up and destroyed.

The ordinary administration of the Act rests with the Police. It does not apply to smooth bore guns or to genuine antiques, and dispensations can be granted for arms retained merely as war trophies: but subject to these exceptions any person who possesses or wishes to possess any firearm must, unless he is a member of His Majesty's Forces or a constable, obtain from the Police a "firearm certificate." These certificates are granted to responsible persons who can show good reason for holding firearms, but must be refused to persons who are criminal, of unsound mind, intemperate, or in any other way a "danger to the public safety or to the peace." The Police keep registers of persons authorized to manufacture or sell firearms and ammunition, and have power to refuse registration to persons who might cause danger to the

public safety or to the peace. Firearms can be sold only by persons so registered and purchased only by the holders of certificates.

The Police prosecute for offences, and they have power of arrest. A would-be burglar who has not yet committed any overt act can sometimes be arrested for the unauthorized possession of a revolver, and a murder as well as a burglary may thus be prevented.

The Home Office is the Central Authority under the Act and exercises a general supervision over its administration. Thus the Home Secretary makes rules under the Act "for regulating the manner in which chief officers of Police are to carry out their duties and generally for carrying the Act into effect" and he prescribes the forms of registers and certificates. When the Act came first into operation the Department issued full instructions to all police forces as to the steps to be taken and as to the way in which the discretion allowed them in many points should be exercised. The Act now operates smoothly and applications to the Home Office for directions or advice are few.

Another power given to the Home Secretary by the Act is to prohibit the removal of arms and ammunition from one place to another within the United Kingdom or for the purpose of export. Before the Irish Truce steps had to be taken to prevent the removal of arms from England to Ireland; and the power to stop export is important when used for such purposes as to prevent the selling of arms to tribes on the eastern frontiers of the Empire.

Fires

There is at present no statutory "Central Authority" to deal with questions of danger from fire. The adoption of the Fire Brigade clauses of the Public Health Act of 1907 is subject to the Home Secretary's approval: and where a Police Force, as in Liverpool, Manchester and Leeds, includes the Fire Brigade, the Home Secretary's police powers apply: but with these exceptions the maintenance of fire brigades and fire appliances has been left to the local authorities alone, with the result that there is often much lack of co-ordination and that a fire brigade will sometimes even refuse assistance to extinguish a fire if it be just outside its own boundary.

During the war the Home Secretary was given power by a Defence of the Realm Regulation to establish schemes of co-ordination between fire brigades to meet the danger of aerial attack: but these powers, useful as they were, have now lapsed. The Royal Commission on Fire Brigades of 1923 recommended that the Home Office should be the Central Fire Authority for certain purposes: but their recommendations cannot be put into force without legislation. In the meantime the functions of the Home Office are as described by the Royal Commission: "The Home Office deals with many important fire problems and has acquired considerable experience of such topics through its Inspectors of Factories and Explosives. It is in touch with the organization of police fire brigades and was responsible for the war time schemes for

the co-operation of fire brigades already referred to. The Home Office is also concerned with a variety of special fire risks, such as celluloid, petroleum, etc. and it is the department concerned with problems of fire prevention in general."

Some of these special fire risks require to be noticed here.

The keeping and use of *Petroleum* Spirit is regulated by the Petroleum Acts, 1871 and 1879, and the provisions of these Acts may on the Home Secretary's advice be extended to other substances by Order in Council, and have been so extended to Carbide of Calcium. A licence from the local authority is required for the keeping of more than three gallons of petroleum spirit, subject only to an exception in favour of motor spirit kept solely for use in light locomotives and not for sale, and kept in accordance with regulations made by the Secretary of State. If a local authority refuses a licence for a petroleum store there is an appeal to the Home Secretary who, after an inquiry by a person appointed by him, may grant the licence with or without conditions. The Inspectors of Explosives are the persons whom the Home Secretary appoints to hold these inquiries, which are somewhat numerous as local authorities dislike the responsibility of granting licences and prefer that the matter should be settled after a Home Office inquiry. They act also as his expert advisers in making the regulations for motor spirit and generally in all questions relating to Petroleum and other inflammable liquids.

The increased use of *celluloid* and particularly the

enormous numbers of films made from it became in the early years of this century a new source of danger, which was brought home to the public by several fatal fires. One or two local authorities put forward in their private bills proposals for regulating the storage of celluloid and films, and in 1913 a Committee appointed by the Home Secretary reported on the precautions which should be adopted; but the outbreak of the war put a stop for a time to all general legislation on the subject, though London and Glasgow obtained powers under local acts. Soon however the attacks by enemy aircraft so increased the risk of dangerous fire that immediate action became imperative, and the Home Office secured the passing of regulations under the Defence of the Realm Act, which had at any rate the effect of limiting the danger.

When these regulations expired at the end of the war, the Celluloid and Cinematograph Film Act 1922 was passed. It was based on the Defence of the Realm Regulations and on the report of the Home Office Committee of 1913. Leaving places where celluloid and films are manufactured to rules under the Factory Acts, it dealt with places where they are stored, laying down precise regulations as to the construction of the premises, the quantities to be kept, and the mode of storing them. These regulations the Home Secretary has power to modify, and, if films are exhibited, as they often are to the trade, on the premises where they are stored, he makes rules for the use of the apparatus. The enforcement of the Act and the inspection of premises rest with the local authorities

and their officers, while the Home Office maintains a general supervision over its working.

Picture-houses and Theatres

The control of houses for the public exhibition of films began earlier than the regulation of places where films are made or stored. Actual disasters had shown the extreme danger to life where a large audience was crowded into an ill-constructed building and took panic at a sudden outbreak of flame from the apparatus; and in 1909 the Cinematograph Act was passed which laid on the Home Secretary the duty of making "regulations for securing safety in cinematograph and other exhibitions," and on the County and Borough Councils the duty of licensing the buildings "on such terms and under such restriction as, subject to these regulations, they may determine."

The Home Office regulations have been amended more than once, and in 1923 a new code, settled after consultation with experts, was put in force. It deals fully with such matters as seating and exits, fire appliances, and the provision of a sufficient staff of attendants, but its main provisions are directed to the proper construction and use of the projecting apparatus and films, and of the enclosure in which they are required to be placed. The regulations on these points are minute and exhaustive, as are those dealing with the winding room and the lighting and electric installation: and there are supplementary requirements as to portable projectors and compressed gas cylinders.

The duties of the Home Office are limited to the making of the regulations and a general supervision of their working. The inspection of the picture-houses and the enforcement of the regulations and of the conditions of the licences rest with the local authorities and their officers.

In the case of theatres, the responsibility for safety rests entirely with the local authorities. The London County Council obtained in 1878 ample powers which applied not only to the theatres licensed by the Council itself, but also to the two theatres (Drury Lane and Covent Garden) which exist in virtue of Royal Patents and to the theatres in the central area of London licensed by the Lord Chamberlain. Outside London the restrictions necessary for safety are imposed as conditions in the licences granted by the local authorities. The Home Office has no powers and takes only a general interest in the matter arising from the fact that the Home Secretary has to deal with any question of safety which may arise in Parliament.

Chapter XIV

PUBLIC MORALS AND PUBLIC AMENITIES

THE Home Office, as already explained, deals with all the internal affairs of the kingdom except those specifically assigned to other departments, and when Parliament decides to bring new subjects under administrative control, it usually assigns them to the Home Office either temporarily as in the case of aircraft or permanently as in the case of cremation. The result is that the department has to deal with a large number of miscellaneous matters which, for lack of a better description, are grouped under the title at the head of this chapter.

I.—The Home Secretary's interest in the *Licensing of Plays* arises from the fact that in the House of Commons he has to represent the Lord Chamberlain, in whom the power to license or veto is vested. This power, originally exercised as a royal prerogative, was made statutory as regards London and Westminster in 1739, and extended to the whole country by the Theatres Act of 1843. Every new play has to be submitted, by the Manager who proposes to produce it, to the Lord Chamberlain's Examiner of Plays, and if after examination the Lord Chamberlain is " of opinion that it is fitting for the preservation of good manners, or of public

decorum or of the public peace" so to do, he refuses his licence, or, more often, suspends its issue until the objectionable features are eliminated. If his decision is attacked—and there is no subject on which opposite views are more strongly held—it falls to the Home Secretary to defend him. Hence the Lord Chamberlain has from time to time to supply the Home Office with materials for his defence, and sometimes he consults the Home Office beforehand if it is clear that a decision which has to be taken will excite the wrath either of the robust moralist or of the "frank" playwright. He would never of course ask the Home Office to read a play and assume the responsibility that rests with himself, but he occasionally finds it of advantage to discuss in advance the questions of principle or of law that are likely to arise. The advice of the Home Secretary is particularly required when political questions are involved, as when, many years ago, a Russian flag was trampled on the stage, or later when some feature in a performance of "The Mikado" gave pain to the Japanese legation.

II.—The Home Secretary advises local authorities regarding the arrangements for controlling the *exhibition of films.*

The local authorities were endowed with the censorship of films by an unexpected legal decision. When the Cinematograph Act of 1909 was passed for the purpose, as described in its title, "of making better provision for securing safety at cinematograph and other exhibitions," it was not supposed that the licensing powers of the local authorities

included a power of censoring the films: but in the case of *Stott v. Gamble* (1916, 2 *KB.* 504) the High Court decided that conditions could be attached to the licence as to the nature of the films to be exhibited. Each local authority was thus given an independent control of the films to be exhibited in its area, and much confusion followed. Films freely exhibited in one town were suppressed in another, and no exhibitor of a new film in any town could ascertain beforehand whether it would be allowed or suppressed after the first performance. A strong demand arose, chiefly on the part of the exhibitors, that the Home Office should establish a censorship which would operate uniformly throughout the country; but the Home Office was, it may be admitted, not eager to undertake a new duty which might expose its chief to continual criticism in Parliament and the press. Happily a good working solution was found. The trade itself established a Board of Censors: and, when the Home Secretary was satisfied with its constitution and the lines on which it proposed to work, he issued a recommendation to all local authorities to make it a condition of their licences that only films passed by the Board should be exhibited. This advice has been generally accepted: the Board, though an independent body, works on friendly terms with the Home Office, and its decisions have usually satisfied both the trade and the public.

III.—*Betting and Lotteries* is another matter in which the Home Office has often to advise without itself possessing any statutory powers. Prohibitions

on this subject are contained in legal enactments which have to be enforced by the Police and which, if their meaning is doubtful, can be authoritatively interpreted only by the Courts. As however there are many points of doubt and conflicting legal decisions, the action of the Police is apt to vary widely in different places, and there are frequent appeals to the Home Secretary to instruct the Police to act, to forbid their acting, or to secure action on uniform lines. When a lottery is brought to the Home Secretary's notice and the law is clear, he is bound to tell the Police to warn the promoters and if necessary to prosecute: where, as in the case of the Golden Ballot, a scheme was devised just on the margin of the legal prohibition, so that no one could say what view a court would take, the only course was to institute proceedings and leave the matter for judicial settlement.

Where lotteries which are clearly illegal have established their headquarters in a foreign country and are conducting through the Post Office a business which could not be tolerated if its promoters were in England, the Home Secretary has in many cases issued warrants for the stopping of their correspondence. Such lotteries are usually not only illegal but also fraudulent, and the use of this power has effectively stopped some gigantic swindles.

IV. The suppression of *obscene books and pictures* is an ordinary police duty, but it is one in which the Home Office is specially concerned because of the international agreements on the subject. The first of these was concluded at a conference called

by the French Government in 1910. It provided for international co-operation, each country agreeing to appoint a "central authority" to supervise the internal arrangements and to communicate direct with the central authorities of the other parties to the convention. Division D of the Home Office was appointed the Central Authority for Great Britain. In 1923 a further conference was called by the League of Nations and an agreement was reached by which, when it is ratified, each country pledges itself to take active steps to suppress the traffic, and if necessary to propose adequate legislation for this purpose. In this matter English law is already in advance of that of most countries, and the Home Office has for some years been concentrating its efforts on checking the foreign trade. The sending of obscene matter through the post is a criminal offence and authority is given by the Home Secretary's warrant to stop and open suspected packages. When the addresses of foreign dealers have been ascertained from their circulars or advertisements, letters addressed to them and consignments coming from them are stopped, remittances are forfeited, offending persons in this country are warned, and in bad cases English dealers are prosecuted to conviction.

V. *The White Slave Traffic*—or as it is now officially called, the "Traffic in Women and Children"—also concerns the Home Office closely on account of the international agreements on the subject. The earlier convention provided for international co-operation by the establishment

in each country of a "central authority" to supervise the work of suppression and to correspond directly with the central authorities of other countries, so avoiding the long delays of the "diplomatic channels." In England the Commissioner of Metropolitan Police is the central authority. In 1921 the League of Nations took the matter in hand, established an advisory committee to which the Home Office sends a representative, and secured an agreement for strengthening the laws of less advanced countries. The traffic to South America now avoids England, where the law is more stringent than in any other country, and for some years the chief concern of the Home Office has been the dangers to which young girls are exposed who are induced to go abroad as members of theatrical companies, and sometimes find themselves, when the tour ends or fails, abandoned and without means in a foreign town. By the Children (Employment Abroad) Act of 1913, Parliament prohibited children under sixteen being taken abroad for employment without a licence from a magistrate, but refused to extend this to girls above that age. The passport requirements however now bring to the notice of the Passport Office all girls going abroad under theatrical or music hall engagements, and by an arrangement with the Foreign Office steps are taken to stop their going without proper guarantees, or, if that is impossible, to ensure that they and their parents are fully warned of the risks they run.

VI. The Home Secretary is the authority for

granting licences for *Vivisection.* The first act of parliament to prevent cruelty to animals was passed a hundred and two years ago by the efforts of Richard Martin, M.P. for Galway and founder of the Society for the Prevention of Cruelty to Animals; but the duties of the Home Office under this head began only with the Cruelty to Animals Act of 1876, usually called the Vivisection Act, which was passed after an inquiry by a Royal Commission had established the value of vivisection to humanity and the risk of unnecessary cruelty involved in its unrestricted practice. The task laid on the Home Office was to secure the minimum of suffering to animals without unnecessarily hampering the scientific investigations which have done and are doing so much to cure disease and alleviate pain in men and in animals. The task is not an impossible one, but it requires much careful, even meticulous, administration.

Under the Act no person may perform a painful experiment upon an animal unless he holds a licence from the Home Secretary and performs the experiment in a suitable laboratory registered by the Home Office. The licences are granted only to trustworthy persons with medical or scientific qualifications and only for definite physiological investigations, and they have to be renewed annually. All experiments are subject to statutory conditions which require *inter alia* that the animal must be under anæsthetics throughout the experiment and that it must be killed before it recovers consciousness if it is likely afterwards to suffer serious pain: and these conditions can be relaxed only in special cases

on a certificate given by two high scientific authorities that the relaxation is essential if the object of the experiment is not to be frustrated. These certificates may be disallowed or limited in their scope by the Home Secretary. Complete returns of all experiments and of their results are made to the Home Office and statistics are published annually. The work is watched by two Inspectors, who are men of scientific training but not themselves experimenters: they are appointed by the Home Secretary and act as the Home Office advisers on all questions arising under the Act. On questions of special difficulty assistance is given by an Advisory Committee composed of distinguished scientific and medical authorities.

The number of licences now in force is 953 and the number of experiments carried out in 1923 was 134,783. Of these 124,728 were simple inoculations, feeding experiments and other processes not involving any serious operations, and all the others were performed under anæsthetics, most of them on animals that were killed before recovering consciousness. It may safely be said that the total of pain caused by vivisection in a whole year is not one-tenth of that suffered by wounded birds in August and September.

VII. The Home Secretary's powers in relation to *Burials* are now much restricted. Formerly he was the central authority under the Burial Acts for all purposes: but in 1906 the Local Government Board, now the Ministry of Health, took over his jurisdiction in matters of sanitation, including the

opening and closing of burial grounds, and there remain with the Home Office only authority in ecclesiastical matters and power to license exhumations.

There is little now to be done under the first of these two heads, the Burial Act of 1880 having settled the long disputed question of the service at nonconformist burials. The Home Secretary retains only powers, not often exercised, for the settlement of disputes as to consecration of part of a burial ground, and as to the allotment of portions of the unconsecrated ground to different denominations, and he approves the tables of fees of ministers and sextons. On the other hand the applications for license to exhume are fairly numerous, most of them for removal of a body from one grave to another for family or sentimental reasons. Such licences cannot be given in cases where the ecclesiastical authority has power to grant a faculty for removal, and when they are given conditions are imposed to ensure privacy and stringent sanitary precautions.

Exhumation licences are also granted on the application of the Director of Public Prosecutions or the Police in the interests of justice, and not a few murders have been revealed by the analysis of the remains in such cases. Where an inquest has not been held, the Coroner has power to order the exhumation of a body, but he often comes to the Home Office for advice before exercising this power in a case of suspected murder. Exhumations are also sometimes allowed to enable relatives to identify a body: and in one notorious case a

licence for exhumation, granted at the instance of the High Court, put to rest the widespread myth that a respectable shopkeeper, who had lived and died as Mr. Druce, was the eccentric Duke of Portland in disguise.

VIII. The Home Secretary makes and administers regulations with regard to *cremation.*

There was long a question whether cremation of the dead was permitted by English law: but in 1884, a Dr. Price, who styled himself "the last of the Druids" attempted to burn the body of his dead child on the top of a Welsh mountain, and on a criminal charge being brought against him by the Police, Mr. Justice Stephen held that cremation is lawful if no nuisance is created. The Cremation Society had already opened a crematorium at Woking and when the law was made clear cremations became common: and in 1902 Parliament passed the Cremation Act giving the Home Secretary power to make regulations as to the inspection and maintenance of crematoria, the conditions under which burnings may take place, their registration and the disposal of ashes. Regulations, drafted by a departmental committee, were adopted by the Home Secretary, and in a slightly modified form still remain in force. Their main object is to guard against the danger that a murderer, by procuring the cremation of his victim's body, might obliterate the evidence of the murder; and with this in view, they require precise certificates to be given either by two medical men or by a coroner who has held an inquest on the body,

and they place on the medical referee, appointed by the authority of the crematorium, the responsibility of seeing that these certificates establish beyond question the cause of death. The effect of the rules will probably be that any attempt to cremate the remains of a person who has been poisoned will lead to detection.

The regulations work smoothly, though there are occasional difficulties which have to be solved by an application to the Home Office, as for instance when a body is brought from abroad for cremation. There are now fifteen crematoria in England and Wales, and more than 26,000 cremations have taken place, yet in no case has any question subsequently arisen as to the cause of death.

IX. The Home Secretary has some small functions in connection with *Fairs*. In the old law of fairs, there were two gaps: a fair, whether originating in a Crown grant or existing by prescriptive right, could not be abolished nor could its date be altered: by two Acts passed in 1871 and 1873 the Home Secretary was empowered, subject to certain consents, to alter the date or to abolish the fair. The former is a simple matter, but applications for abolition have to be treated with some caution. Sir William Harcourt decided that a fair was not to be discontinued merely because it was no longer needed for business and gave trouble to the police, if it still provided once or twice a year a popular amusement for poor people; and the course he laid down has ever since been followed by the Home Office in this and

similar matters. Sanction would not for instance be given to a local byelaw which would stop children playing games in quiet streets so long as no better place of recreation is provided for them by the local authority.

X. The Home Office formerly acted as a guardian of *Open Spaces* and the duty seems an appropriate one: but its powers over commons were transferred in 1889 to the Board of Agriculture, while parks provided under the Public Health Acts come within the jurisdiction of the Ministry of Health. The only functions that remain with the Home Office under this head are the approval of byelaws for the open spaces, most of them disused burial grounds, maintained by the Metropolitan Borough Councils, and the approval of byelaws made by local authorities for the use by the public of the seashore.

XI. There are many matters relating to the *use of the streets* in which the Home Office possesses jurisdiction. In London the Home Secretary approves of the regulations of the Commissioner of Police for the control of street traffic, and himself makes regulations as to the licensing of cabs and omnibuses and as to cab fares; and these regulations often involve administrative questions of importance and difficulty. Outside London similar matters occasionally come within his powers, as for instance the approval of police byelaws under the Public Health Act of 1907, and under local acts. Street collections, in London and elsewhere, are governed

by police regulations which are subject to his approval and which, when they affect collections for propagandist purposes, have sometimes raised questions which required delicate handling.

XII. The Home Office is the central authority under the Act of 1907 relating to *Advertisements*. That Act enables the Councils of Counties, Boroughs and larger Urban Districts to make byelaws for the control of advertisement hoardings more than twelve feet high, and of advertisements which would disfigure beautiful landscapes or public parks, and such byelaws come to the Home Office for confirmation. The department has done its utmost to aid local authorities in their efforts to prevent by such byelaws the destruction of the rural beauties of England: it has suggested model forms which would be likely to be effective without running the risk, which all byelaws encounter, of being questioned in legal proceedings as being *ultra vires* or unreasonable, and it has obtained promises that they will be vigorously defended if their validity should be attacked. Such byelaws have already saved some of the most beautiful scenery—in the Lake District, for instance, and the Cheddar Cliffs—from being ruined; and their operation is perfectly harmless to advertisers who, diverted from this mischievous method of publicity, can easily find less objectionable channels for making their wares known.

Unfortunately there has recently been an increasing tendency on the part of advertisers to disfigure country roads in order to attract the

attention of the growing number of motorists. Until wider powers are conferred by Parliament, it will be difficult to deal with this menace to rural scenery.

The adoption by local authorities of the provisions of the Public Health Acts Amendment Act of 1907 with regard to sky-signs is subject to Home Office approval.

XIII. The Home Office is the central authority in the Acts relating to *Wild Birds*, whose preservation is so essential to the interest and enjoyment of country life and to agriculture. The movement for their protection was happily taken up by enthusiasts in time to save most of the rarer species of British wild birds from extinction, and the most valuable work, such as the establishment of sanctuaries, has been done by their societies; but they have been aided by legislation. From 1869 a series of acts of parliament has granted, by small steps, an increasing amount of protection, the most important being the Act of 1880 which established, with some qualifications, a close time for all birds during the breeding season, and the Act of 1894 which made it possible to protect their eggs. As bird life varies widely in different districts, the Home Secretary was empowered, on the application of County and Borough Councils, to make orders extending or varying the close time, protecting specified birds or specified eggs for the whole year, and establishing bird sanctuaries: and every year applications are received for the making or amending of these orders.

In 1913 a Departmental Committee was appointed by the Home Secretary to review the whole subject, and in its report issued in 1919 it made recommendations for improving the existing law which experience has shown to be defective in many points. As a result of this report an Advisory Committee, of which Lord Grey of Falloden is Chairman, was set up, and with its assistance the Home Office is carrying out some of the recommendations by administrative action. If effect is given by legislation to the other recommendations, a more uniform and effective system of wild bird protection will be obtained.

XIV. *Summer Time* is the last public amenity to be added to the concerns of the Home Office. When it was first introduced during the war, the dates when it began and ended were fixed by Order in Council made on the Home Secretary's advice. Both dates are now fixed by the Summer Time Act of 1922: and the only duties left to the Home Secretary are to issue the notices announcing the change in April and September and to deal in Parliament with the demand which is being strongly made for an extension of the dates.

There are many other minor functions belonging to the Home Office which are isolated and difficult to classify and any description of which is excluded by limits of space. Such are for instance the making of regulations for the registration of Trade Unions, for the carrying into effect of the Building Societies Act of 1874, for the fixing of the standard of

non-inflammability of textile fabrics which are claimed to be "non-inflammable," and for the disposal of property in the possession of the Police; and certain powers which the Home Secretary still retains under the Lunacy Act of 1890, and the Trading with the Enemy Act of 1914. The Home Office also undertakes the work of verifying those legal documents which need official verification for use in foreign countries; it has to settle the arrangements for the annual distribution of the Statutes to Courts and Public Officers; and it shares with the Board of Trade the responsibility for superintending the collection of the Census of Production.

Chapter XV

DUTIES IN RELATION TO PARLIAMENT AND TO LOCAL GOVERNMENTS

THE Home Office has certain duties, which must now be mentioned, in relation to the machinery of Parliamentary and local government—parliamentary and local elections including the registration of electors: the passing by Parliament of local acts: and the making of byelaws by local authorities.

Parliamentary Elections

The Home Office has recently become the Central Authority under the Acts relating to Parliamentary Elections. Until 1918 the registration of electors and the conduct of elections were governed in all points by acts of Parliament, and there were practically no administrative duties devolving on any central department. The Home Secretary appointed the Revising Barristers who decided judicially questions as to the right of individuals to be registered as electors, and the Home Office collected and published statistics of the numbers of electors registered and the numbers voting at general elections; but a general election brought no administrative work, and only affected the office by so absorbing the energies of the country that for

nearly a month the inflow of correspondence from the public practically ceased. It was for many years a question whether legislation with regard to registration and elections belonged to the Home Office or the Local Government Board, and sometimes one department and sometimes the other took charge of government proposals on these subjects and watched the innumerable bills introduced by private members. Sir Charles Dilke as President of the Local Government Board had charge of the Registration and Redistribution of Seats Bill of 1885; and though Lord Cave as Home Secretary was responsible for the Representation of the People Bill of 1918, he was assisted in its preparation, not by his own staff, but by the officers of the Local Government Board.

The revolutionary changes introduced by the Act of 1918—the enormous increase in the number of voters, the shortened qualifying period, the provision for absent voters, and the one-day general election—involved extensive changes and adaptations in the electoral machinery: and Parliament found it necessary for the first time to call in the assistance of a Central Authority—not of course to modify in any way the lines it fixed for the new representative system—but to secure its smooth working, and also to regulate the government contribution towards the cost of registration and elections. On the last point it was necessarily the Treasury that fixed the scales of payment, but all the other duties of the Central Authority were imposed on the Local Government Board, and, when that department was transformed into a Ministry of Health, they

were transferred by Order in Council* to the Home Office, and now form part of its regular work, with the assistance in many points by the Registrar General.

Under the Act the Home Office besides discharging a large number of minor functions—such as designating the registration officers and the returning officers in certain cases, approving the appointment of deputies, and deciding as to expenses incurred outside the Treasury scales—has to undertake three duties of a more general character—

1. To advise as to the making of Orders in Council prescribing fees and forms, altering when necessary the statutory rules for registration, and regulating the arrangements for absent voters. Some thirty such orders have been made.

2. To give general or special directions to registration officers as to the arrangements for carrying out their duties.

3. To control the alteration of polling districts and the fixing of polling places.

The Home Office also receives under the Act copies of all registers, and undertakes the compilation and publication of statistics of registered electors, and, when required by Parliament, it prepares returns of the numbers of persons voting and of the expenses of candidates.

In order to perform these duties and to assist generally in the carrying out of new and somewhat intricate methods of registration and election, the Home Office has found it necessary to watch the working of the whole system, and from time to

* Statutory Rules and Orders, 1921, p. 291.

time to deal with many problems which have arisen—some capable of being settled by legal advice, others requiring resort to legislation. Several amending acts have been passed, and a series of circulars explaining the whole registration arrangements have been issued; and on the eve of a general election, a similar circular explaining the electoral law and procedure is sent out to all returning officers.

Parliamentary Proceedings

It is not necessary to discuss here the Home Secretary's duties in the House of Commons. They have been mentioned in Chapter I, and, in the twelve chapters (Chapters III to XIV) dealing with the various functions of his department, it has been assumed in regard to each of them that he introduces and carries through the House new government legislation, watches and if necessary opposes private members' bills, answers questions, and when occasion arises defends his administrative acts and those of the officers for whom he is responsible—not only his own staff, but the Commissioner of Police, the Prison Commissioners and the Director of Public Prosecutions—often also those of Judges, Magistrates and Police Officers.

Mention must however be made of certain duties with regard to Private Bill Legislation. With one exception these are not very onerous. Bills confirming provisional orders made by the Home Secretary have to be introduced and carried through the various stages: but these orders are few—only a

occasional order for taking land compulsorily for Metropolitan Police purposes, and an annual order to validate marriages rendered invalid or doubtful by some informality unknown to the parties. Naturalization bills have to be watched and the certificate required by the Standing Orders of the House of Lords given or refused; but such bills are so strongly discouraged that they now appear only at intervals of years. The only substantial body of work under this head is the watching and criticizing of local bills which may contain provisions in conflict with the general law of the land or unduly infringing public rights or the liberty of citizens.

At one time private bill legislation was practically uncontrolled except by the opposition of parties whose interests they affected, and sometimes extraordinary provisions slipped through without the knowledge of the House or of any member of the House. It is related that the head of an Oxford College, whose appointment was subject to the condition of celibacy, astonished the fellows of the College by announcing his impending marriage and producing a Canal Act which had just received the royal assent and which contained a provision to the effect that the Warden of the College was permitted to marry. This might well have happened a century ago; and even a few years ago a northern borough had a provision in one of its local acts which prohibited any one from prosecuting for a criminal offence in the borough except the Town Clerk, the repeal of which was secured by the Home Office with no small difficulty. Clauses creating new

criminal offences and imposing fines and imprisonment on offenders, which in a public bill would have been certain of rejection, used to be copied from one local bill to another, and passed by the score without coming to the notice of the House or of any government department. In 1882 Mr. Hopwood, afterwards Recorder of Liverpool and a zealous defender of individual liberty, brought the matter before the House of Commons and secured the appointment of a special Committee to which all local bills containing police or sanitary provisions were referred. This Committee, formerly the Police and Sanitary Committee, now called the Local Legislation Committee, has since 1884 been reappointed annually on the motion of the Under Secretary of State for the Home Department, and deals with all local bills which propose any departure from the general law. The Home Office, the Ministry of Health and occasionally other departments present reports to it, the Home Office dealing with clauses which create new offences, impose increased penalties or infringe in any way the liberty of the subject; and a representative of the department attends its meetings and explains the objections to the clauses. Not all proposals that involve a departure from the general law are rejected: they are considered on their merits, and sometimes so good a case is made for them as to justify the Committee in passing them. Two Public Health Acts, those of 1890 and 1907, were based on clauses which had been repeatedly passed by the Committee; and others are from time to time passed as being justified by local circumstances;

but the reports made by the Home Office and its appearances before the Committee lead to the rejection of many objectionable proposals, and secure that no local enactment extending the scope of the criminal law or the severity of its penalties, or interfering with the rights of the subject, shall slip unnoticed through the parliamentary machine. The Home Office reports in the same way on other bills coming before other committees—for instance railway bills making trespass a criminal offence: and at one time very strong objection had to be taken to proposals by railway companies to interfere with commons: but the protection of commons is now transferred to the Board of Agriculture.

Local Elections

Under the Act of 1918 the register of local government electors is prepared along with the parliamentary register, and the powers of the Central Authority in regard to both registers were vested in the Home Office by the same Order in Council. This Order in Council also transferred to the Home Secretary the powers of the Ministry of Health in the matter of local elections. The procedure for the election of Municipal Borough Councils is laid down by statute, and is applied by reference, with many modifications, to County Council elections: and for these nothing is required of the Central Authority. But when Parliament had in the Act of 1894 to provide for elections to minor local authorities, it decided not to proceed by the

cumbrous method of legislation by reference, and left the whole matter to be dealt with by the regulations of a Central Authority; and the Home Secretary has now had transferred to him the making of regulations for the election of parish councillors, of guardians, and of urban and rural district councillors, and also regulations under a later act for the election of Metropolitan Borough councillors. He previously had under the Municipal Corporations Act the control of the procedure for the redistribution of the wards of boroughs: and, by a further transfer of powers, he has in future to make any order required for altering the number of county councillors, and the number and boundaries of the electoral divisions of counties and of Metropolitan Boroughs.

The transfer of these powers to the Home Office seems to be a first step towards concentrating in one department all questions relating to the machinery of local government as distinguished from the specific functions of local authorities. All the domestic departments have relations with local authorities in regard to their specific subjects of administration—the Home Office with regard for instance to police and public order, the Ministry of Health with regard to medical officers, hospitals, water, drainage and other sanitary matters, the Education Department with regard to education the Board of Trade with regard to gas and electric supply and so forth. But the central government's duties as regards the machinery are scattered—the Home Office now takes electoral matters, the Privy Council decides on the constitution of new

Boroughs, and the Ministry of Health still makes orders or provisional orders regarding the constitution of County Councils, their areas and the areas of other local bodies. Lord Haldane's Committee recommended that in all matters relating to the machinery of local government the Home Office should be the central authority, acting necessarily in consultation with all the other departments concerned,* while they thought the control of local finance was more appropriate for the Treasury than for the Ministry of Health.†

Local Byelaws

Local authorities have certain minor powers of a legislative character of which the most general is the power given to Borough Councils and County Councils to make byelaws, enforceable by summary proceedings and fines, for the "good rule and government" of the borough or county. Such byelaws (except those dealing with sanitary nuisances) are sent to the Home Secretary, and he, acting on behalf of the Crown, has the power of disallowance. A great variety of byelaws have been made under this power, and many of them, such as the byelaws requiring the carrying of lights by bicycles and other vehicles, have been very useful in preparing the way for parliamentary enactments which have ultimately superseded them. The proposals made in pursuance of this power require however very careful scrutiny:

* Report of the Machinery of Government Committee, 1918, pp. 77-78, para. 58-60.

† Ibid. p. 21, para. 21.

byelaws are liable to be declared invalid by the courts of law if they appear to the court either to exceed the statutory power under which they purport to be made, or to be unreasonable, or to be "void for uncertainty," that is, not giving definite directions or prohibitions but leaving an arbitrary discretion or dispensing power to the authority that makes them or to some officer. At one time so many byelaws had been rejected on one or other of these grounds that Borough authorities almost ceased to make them; but, after the Home Office undertook the examination of all draft byelaws submitted to it, and refused to pass any which appeared open to exception, byelaws regained their reputation, and there is now a list of "model byelaws" dealing with such subjects as street music, street cries, street obstructions, indecent acts, etc. which can be adopted in any locality where they are needed and which have so far stood the scrutiny of the courts. New byelaws are also from time to time required to deal with new conditions, and the drafting of these is a matter of no little difficulty. Proposals for instance aimed at suppressing the rowdy conduct of trippers in the modern charabancs, which constitutes a serious nuisance in country places, have proved of little use on account of the almost insuperable difficulty of bringing the offence home to individual offenders or attaching responsibility to the owner or driver of the car who is usually an unknown person residing outside the jurisdiction. There is no power of summary arrest of offenders against these byelaws.

There are other byelaw-making powers vested in

local authorities but restricted to special purposes —such as the byelaws for regulating the use of the seashore and the byelaws for the suppression of unsightly advertisements already mentioned—for which the Home Secretary is the confirming authority. All such byelaws are submitted in draft to the Home Office, and the department assists the local authority by the issue of model byelaws and occasionally by drafting of byelaws to meet cases not covered by the models. Home Office sanction is also required for the adoption by borough and district councils of the police clauses contained in the Public Health Act of 1907.

Chapter XVI

JURISDICTION OUTSIDE ENGLAND: SCOTLAND, IRELAND, CHANNEL ISLANDS, ISLE OF MAN

Scotland

HITHERTO the functions of the Home Office have been discussed only in their relation to England and Wales, to which most of them are now confined; but almost all of them formerly extended, and some still extend, to Scotland.

After the Union of the Parliaments of England and Scotland in 1707, a third Secretary of State was appointed for the management of Scottish affairs; but this appointment was dropped in 1746, and from that time till 1885 the Secretary of State who had charge of domestic affairs in England (after 1782, the Home Secretary) took Scottish affairs also, and was assisted in their administration by the Lord Advocate. The business arising in Scotland in the latter part of the eighteenth century amounted to very little, consisting chiefly in the maintenance of order and appointments to ecclesiastical, legal and university offices; but it increased rapidly in the nineteenth century. Ecclesiastical questions came to the front, and Sir James Graham as Home Secretary had for several years to deal with the fierce and prolonged controversy

over church patronage, which ended in 1843 in the disruption of the Church of Scotland. The reforms of the prison system, the establishment of police forces, and the opening of reformatory and industrial schools proceeded in Scotland on the same lines as in England; and factory, mine and truck legislation applied equally to both countries, with the difference only that the Scottish legal system raised for the inspectors difficulties unknown in England. A point was reached when the work arising in Scotland was that relatively to population, greater than in England; and in 1885 Mr. Gladstone's government, yielding to a popular demand, decided on the appointment of a Secretary for Scotland. By an Act of that session, supplemented by another in 1887, the Scottish Office was constituted; and the new minister, in addition to functions previously belonging to the Local Government Board and the Scottish Education Department, had transferred to him "all the powers and duties vested in and imposed on the Secretary of State by Act of Parliament or by custom so far as such powers and duties relate to Scotland," subject to certain exceptions. The transferred powers included the prerogative of mercy and the responsibility for the maintenance of order, but the exceptions were not unimportant. The Home Secretary still retains certain Imperial powers which could not be regarded as related to any one part of the United Kingdom, particularly naturalization and extradition; while those relating to factories and mines, explosives, and vivisection were expressly excepted on account of the importance of uniform administration in the two

countries.* These powers the Home Office still retains (except mines, now transferred to the Mines Department); and, by later legislation, the powers of the Home Office relating to workmen's compensation, the control of aliens and the control of dangerous drugs extend to the whole of Great Britain.

The difficulties which might have arisen from the separation of the domestic affairs of the two countries have been overcome by the close co-operation which has always been maintained between the Home and the Scottish Offices. It was expressly provided by the Cabinet that the Secretary for Scotland might consult the Home Secretary on any difficult question as to the exercise of the prerogative of mercy and this he has done from time to time: and on all matters relating to police, prisons and the maintenance of order the two departments keep closely in touch, and consult each other when any administrative improvement is contemplated or any critical action is called for.

Ireland

The position of Ireland was different. There not only was there a separate Parliament until 1800, but the King had a direct representative with semi-regal powers in the Lord Lieutenant. The Secretary of State was the medium of communication between the English Government and the Lord Lieutenant, had control of the movemen

* Reformatory and Industrial Schools, excepted for a time were transferred later.

of troops in Ireland, and had a general responsibility for the maintenance of peace and for the policy of the English Government. After the Union of Parliaments he retained these functions, and it is clear from the lives of Sir Robert Peel and Sir James Graham that a great part of their time in the Home Office was devoted to Irish affairs; but in modern legislation on such matters as police, prisons, and reformatories the statutory powers which in England were given to the Home Secretary, were in Ireland vested in the Lord Lieutenant or his Chief Secretary; and when it became the practice for one of these officers to have a seat in the Cabinet, the concern of the Home Secretary in Irish affairs gradually declined. So late as in the eighties of last century Sir William Harcourt took a larger share than his colleagues in forming the Irish policy of the Gladstone Government, and he introduced their bills for the suppression of crime in Ireland; but after his time the duties of the Home Office with regard to Ireland became merely formal, except as regards those acts (Factories, Mines, Truck, Explosives, Extradition, Aliens, etc.) which were administered by the Home Office throughout the whole of the United Kingdom. After the Dublin rising of 1916 however, when there was for a short time a vacancy in the post of Chief Secretary, the Home Secretary's functions revived, and Sir Herbert Samuel took temporary control of Irish administration, and himself visited Dublin. This control lasted only for a few weeks until the appointment of a new Chief Secretary.

An entirely new state of things arose in

consequence of the passing of the Government of Ireland Act in December 1920, the conclusion of the "Treaty" in December 1921, and the legislation of 1922 which gave effect to the treaty. Southern Ireland became a dominion and passed entirely from the control of the Home Office. Its parliament was granted legislative powers and its government administrative powers in respect of all the acts which in England are administered by the Home Office, and its relations with the Imperial Government were brought, like those of other dominions, within the province of the Colonial Office.

Northern Ireland on the other hand remained part of the United Kingdom and its relations with the Imperial Government were by its own choice left in charge of the Home Office. Its position and the powers of its legislature are determined by the Government of Ireland Act of 1920, subject to certain necessary adaptations introduced by the Irish Free State (Consequential Provisions) Act of 1922. The latter gave it a Governor of its own who corresponds in official matters with the Home Office, and, to advise and assist him on all matters which are reserved for the Imperial Government, he has an Imperial Secretary appointed by the Home Secretary. Under this régime, most of the Home Office functions have passed to the Government of Northern Ireland, but the Home Office still deals with naturalization, and the control of aliens, and with extradition and fugitive offenders. The Home Office also deals with two matters, Fisheries and Diseases of Animals, which were to

have been regulated by the Council of Ireland, a body which under the Act of 1920 would have had jurisdiction over both Northern and Southern Ireland. All those matters which would have been dealt with by the Council of Ireland were brought in Southern Ireland within the independent jurisdiction of the Free State by the Irish Free State Constitution Act of 1922, while in Northern Ireland by the Consequential Provisions Act they were retained within Imperial jurisdiction pending a possible reconstitution of the Council of Ireland by identical legislation of the two Irish parliaments. To bridge over the interval an Order in Council under the latter Act assigned the administration of the Fisheries and Diseases of Animals Acts in Northern Ireland to the Home Office. The arrangement is obviously a temporary one, and the Home Office in the meantime administers the Acts through the Imperial Secretary to the Lord Lieutenant.

The Home Office also deals with those questions which still arise regarding the pensions of the disbanded Royal Irish Constabulary.

The Channel Islands.

The Channel Islands—Jersey, and Guernsey with its dependencies Alderney and Sark—and the Isle of Man come within the province of the Home Office: it stands to them in something of the same relation as that of the Colonial Office to the Crown Colonies, modified by the peculiar circumstances of their history and constitution.

The connection of the Channel Islands with

England dates from 1066, and arises from conquest —not the conquest of the Islands by England, but the conquest of England by the Islands, that is, by the Duke of Normandy of whose Duchy they formed part. They are all that now remains of the Duchy of Normandy: the King of England rules them in virtue of his succession to the Dukes of Normandy, and their "Royal Courts" of justice and their "States" or legislatures are descended from the local courts or councils of the Norman Dukes.

The supreme legislative powers of the King and the British Parliament extend to the Channel Islands as they extend to the rest of the Empire, but in practice the ancient rights and privileges of the islands are respected, and Parliament would never, save in the last resort, interfere with the constitution and powers of the Royal Courts or the "States." Following the ancient practice, the proposals of the local legislatures are dealt with by the King in Council, and the King's prerogative powers in the Islands are exercised through one of his Secretaries of State—in most matters through the Home Secretary.

In one matter the Secretary of State for War intervenes. The Lieutenant Governors of the Islands are appointed by the King on the joint recommendation of the Secretaries of State for Home Affairs and for War. The War Office is concerned because these officers are commanders of the troops in the Islands as well as civil governors; and by arrangement the Secretary of State for War submits to the King the name of the officer jointly

agreed on, the Home Office afterwards preparing and submitting the warrant for his civil appointment. The Bailiff, who presides over the Royal Court and the States, and the law officers and other civil officers—all of whom are local men—are appointed by the King on the Home Secretary's recommendation: all ecclesiastical appointments in the Islands (which are in the diocese of Winchester) are made by the King on the recommendation of the Home Secretary who usually consults the Lieutenant Governor: and the King exercises through the Home Secretary the prerogative of mercy and any other prerogative powers which apply to the Islands.

The Royal Court of each Island, in its judicial capacity, consists of the Bailiff and twelve "jurats" elected for life—in Jersey by the rate-payers, in Guernsey by the "States of Election." The "States of Deliberation" or legislative body has developed out of the Royal Court and consists in Jersey of the Bailiff, the twelve jurats, the rector and constable of each of the twelve parishes, and seventeen elected deputies: in Guernsey of the Bailiff and twelve jurats, two law officers, ten rectors, and fifteen indirectly elected and eighteen directly elected deputies. The States of Guernsey have power to legislate for Alderney and Sark, though Alderney has States of its own with limited powers, and Sark has also a minute parliament called the Chief Pleas with power to make local ordinances, but subject unfortunately to the veto of the Seigneur.

The States possess legislative authority over all the internal affairs of the Islands, including finance

and taxation, but all laws passed by them have to be ratified by the King in Council. If ratification is withheld, the States have the right of appearing and arguing their case by counsel before a final decision is reached. Both the Home Secretary and the Council are generally very reluctant to interfere with the proposals of the States, but in the consideration of such questions as taxation and education regard must be paid to relations with the United Kingdom and to the fact that the States are not fully representative assemblies.

The States have also power to pass local ordinances which do not require formal ratification, but these may be disallowed by Order in Council, and do not in any case remain in force for more than three years.

Acts of the British Parliament extend to the Channel Islands only if the Act applies either expressly or by necessary implication. All Acts relating to imperial matters—such as Extradition, Fugitive Offenders and Naturalization—are expressly applied, but few others except on the request of the Island authorities. When any act applies in whole or part, it is transmitted to each of the two Islands with an Order in Council directing it to be registered by the Royal Court.

The Home Secretary is always consulted by the Privy Council as to whether any law passed by the States should or should not be ratified, and the Order in Council ratifying any law is transmitted to the Island through him. He is also usually consulted if it is proposed that any government bill should apply to the Islands. In these matters

the Home Secretary consults the Governor who reports the views of the Insular Authorities and gives his own opinion. Difficulties do not often arise with regard to the Island legislation, but when they do, particularly if they are thought even remotely to affect the constitution or powers of the States, they are apt to raise historical questions and constitutional issues of extreme complexity; and the discussions, in which the Lieutenant Governor, the Bailiff, the law officers of the Island, the Home Office, the Privy Council and the English law officers are all involved, are apt to be prolonged.

In all other matters the Home Secretary represents the imperial government in the affairs of the Islands, and he communicates to the Lieutenant Governors state intelligence such as War, Peace or the demise of the Crown. The Home Office has always taken a lively interest in every event in their history down to the unveiling of the statue of Victor Hugo at St. Peter Port and the distinguished conduct of the Island troops in the Great War.

The Isle of Man

The Isle of Man, like the Channel Isles, is a dependency of the British Crown, but its history is entirely different. From the ninth to the thirteenth century it was a kingdom feudatory to the Kings of Norway who in 1266 ceded it to Scotland. But Scottish overlordship was not welcomed by the islanders, and in 1290 they sought the protection of Edward I of England. From that time, except for short intervals when it was

overrun by the Scots, it remained attached to the crown of England, and its feudatory kingship was granted by the Plantagenet Kings to various royal favourites until in 1406 it was settled in perpetuity in the Stanley family—the earls of Derby. The last "King of Man" was the seventh Earl who dropped the title of King and called himself "Lord of Man." "Nor doth it please a King," he said, "that any of his subjects should too much love that name." On the death of the tenth Earl the lordship passed by inheritance to the Duke of Athol: and from the Athol family in 1765 the English Government, finding no other means of stopping the smuggling trade from the island, purchased the feudal sovereignty.

The island is now ruled by a Lieutenant Governor, appointed by the King on the recommendation of the Home Secretary, and it retains its own laws, its own legislative body styled the Court of Tynwald and its own courts of law. The Tynwald is an interesting survival of the tynwalds, consisting of a deemster and twelve representatives of the people, which were established wherever Norsemen settled: in the Isle of Man there must have been two of these which were united at some remote date. The Tynwald now consists of the Lieutenant Governor and his Council who form the upper house, and the House of Keys* or lower house.

* The origin of this name is obscure. In early documents they are called "the twenty-four" or in Manx "Kiare-as-feed," but there is no historical support for the suggestion that Keys is a corruption of the Manx word. In 1427 Keys is translated *claves* in Latin documents.

The latter is composed of twenty-four "Keys" or elected members. They were formerly chosen by the house itself and sat for life; but since 1866 they have been popularly elected, and in 1881 women's suffrage was introduced. A new law has to be passed by both houses, and it is then submitted through the Home Secretary for the approval of the King in Council. If approved, it is promulgated on the Tynwald Hill in the English and Manx languages.

The Acts of the British Parliament, if applied to the Isle of Man, are of course supreme, but, as in the case of the Channel Islands, internal affairs are generally left to the local legislature. The Governor used to act as president of the High Court of Justice and of the Court of General Gaol Delivery, but he is now relieved of these duties which fall to the two Deemsters, one of whom is also Clerk of the Rolls in Chancery. The Governor is head of the executive, and of the military power in the Island. On appointment he receives a letter of instructions under the Royal Sign Manual requiring him among other things to maintain the rights of the Crown, to preserve the lawful privileges of the people, to suppress smuggling, to correspond regularly with the Home Secretary, and to transmit to him all new regulations for the better government of the Island "in order to receive our royal will and pleasure thereon."

The functions of the Home Secretary are nearly the same as in the case of the Channel Islands. He is the medium of communication between the Imperial Government and the Island, and he

advises in the exercise of the royal prerogatives, and in the decisions of the Privy Council as to the approval of laws submitted by the Tynwald. The two Deemsters, the Attorney General and the Clerk of the Council are appointed on his recommendation, always made after consultation with the Lieutenant Governor: and the appointment to crown livings are similarly made on his advice. Constitutional questions do not present the same difficulties as in the Channel Islands, but in recent years there has been much discussion as to the constitution of the Council, and as to the control of the Lieutenant Governor and the Imperial Government over finance, which depends mainly on revenue derived from the Customs. In 1911 a general inquiry was made by a Home Office Committee into the civil, judicial and financial administration, resulting in some important reforms, such as the introduction of elected members into the Governor's Council.

During the war large camps for interned German civilians, containing at one time some 30,000 prisoners, were established in the Island by the Home Office with the co-operation of the authorities of the Island, which was thus able, not without advantage to itself, to render an important imperial service. The Island has not however taken its share in the burden of the war debt, and its income tax, imposed only for local purposes, is less than one-third of that which falls on the British taxpayer.

Chapter XVII

WAR AND EMERGENCY DUTIES

It is not possible to say what precisely would be the duties of the Home Office if there should be another great war. During the late war they varied from time to time, and in a future war they might again be different. It must suffice to enumerate briefly the functions which were actually undertaken during the years 1914-18, when normal work was allowed to shrink to small proportions: and when the work arising from the war occupied not less than six-sevenths of the time of a staff in which a large body of able but inexperienced volunteers above military age replaced the many trained men who went to the front, or were seconded to responsible posts in the new war departments.

During the three years preceding the war the duties to be carried out by the Home Office immediately before and after an outbreak of hostilities had been settled and were laid down, along with those of other departments, in the War Book. As the war went on, new functions were imposed by decisions of the Cabinet or by the temporary war measures passed by Parliament, and the powers necessary for effective working were for the most part obtained by the Defence of the Realm Regulations. These regulations were, after all danger was over, subjected to a good deal of undeserved

criticism; but while the war lasted they were essential to its successful prosecution. They took the place of legislation with the immense advantage that they could be altered from day to day as new demands arose, new difficulties had to be met, or new modes of evasion were detected. The extraordinary powers given by them to the Home Office, though small compared with those of the War Office, the Food Controller, the Coal Controller or the Minister of National Service, were essential for such duties as counter-espionage, the control of the export of arms, and protection from air raids. Every draft regulation or amendment of a regulation before it was submitted to the Privy Council was discussed fully by a Standing Committee on which all the departments were represented, and in its deliberations the Home Office took on itself the burden of defending individual liberty, and agreed, through its representative, to restrictions of liberty only when real necessity could be shown.

The first war duty of the Home Office concerned the Police. As soon as the Cabinet declared the Precautionary Period (29th July, 1914), a new division of the office was formed to organise and direct *Police War Duties*, and next day it issued the Police War circular dealing among other things with the mobilization of the Army, billeting, requisitioning of horses and vehicles, protection of vulnerable points, construction of defence works, and intelligence. In all these matters the assistance to be given by the Police had been arranged beforehand with the War Office and the Police only awaited final instructions. Throughout the war

this division kept in close touch on the one side with the War Office and Admiralty, on the other with the Police; and it guided the action of the Police and local authorities in such matters as the calling up of police constables for military service (the first step was to provide, on twenty-four hours notice, eight hundred instructors for Kitchener's New Army), the employment of Special Constables for which new legislation was obtained, the clearance of areas which might be threatened by invasion—a scheme which was organized but happily never had to be carried out—the control and extinction of lights, the co-ordination of fire brigades and other precautions against air raids, the protection of munition works and other points of danger, the control of firearms, and a large number of other matters.

The Home Office took also much responsibility in the matter of *Counter-espionage*, and in particular co-ordinated the work of the "Special Branch" of New Scotland Yard and of the County and Borough Police with the action of the Military Intelligence department. It was due to the effective action of the last-mentioned department that twelve hours before war was declared twenty-one known German spies were arrested and a large number of suspects put under close surveillance, and it is believed that every German spy afterwards sent to this country was caught and executed or imprisoned. Such information as reached Germany by secret channels was carried either in the mail bags of neutral legations which could not be opened, or by the crews of neutral ships who could not be excluded.

The heaviest work was the *Control of Aliens* which absorbed all the energies of the increased staff of the Aliens Division. On 5th August, 1914, the Aliens Restriction Act and the Aliens Restriction Order in Council were passed, and the same day full instructions were issued to the police, and the Home Office, with the help of the Custom Officers already acting as Aliens Officers at the chief ports, quickly organised a strict supervision over all passengers entering or leaving the country. For the next five years the Aliens Division dealt with a long succession of difficult problems,* not made easier by frequent changes in the policy of the government on the questions of internment and expulsion. In the end more than 30,000 alien enemies were interned, while a Committee of two judges of the High Court reviewed the internments at the cost of immense labour to themselves and to the department. Other difficult duties were imposed by Defence of the Realm Regulations particularly Regulation 14B, which put on the Home Secretary the responsibility for interning

* In the first three days of the war, for instance, certain military officers arrested and detained Austrian reservists at a time when we were still at peace with Austria and when any hostile action against her might have given her an excuse for saying she was attacked and claiming the assistance of Italy under the terms of their alliance; representatives of the Home and Foreign Offices attended a conference at the War Office, which led to the issue by the War Office of instructions putting an effective stop to these proceedings—until a few days later Austria herself declared war. A stop was also promptly put to the internment of German reservists *in prison*, a proceeding which would obviously have led to retaliatory action against British subjects in Germany.

dangerous persons not themselves alien enemies but of hostile origin or hostile associations.

The charge of *Internment Camps* was taken at first by the War Office, but early in the war a large part of the responsibility for the civilian camps, especially the large camps in the Isle of Man, devolved on the Home Office, aided by a joint committee of Home Office, War Office, and Local Government Board officers.

The duties in connection with *Trading with the Enemy* which were imposed on the Home Office had to be provided for by the formation of a large new division, but later it was found convenient to transfer the whole of this work and staff to the Foreign Office.

The *Industrial Division* was throughout the war mainly engaged in war work. It employed the Factory staff in recruiting, in substitution work, and in repeatedly taking a census of the production of war material and of machinery suitable for such production. A vast number of exemptions from factory conditions had to be granted to meet the pressure of war demands: in the first rush these had to be granted freely, but they were limited to short periods and later they were carefully adjusted so as to give the maximum output consistent with health, while conditions were imposed as to meals, rest-hours, etc. out of which welfare supervision developed. The factory inspectorate sent some fifty men, one-fourth of their number, to the front, and were drawn on for a large number of experts by the Admiralty and the Ministry of Munitions, and towards the end of the war the

best men that remained undertook responsible work for the Ministry of National Service and were practically absorbed in that department.

In the same way the Mines Inspectors were, under Home Office direction, employed continuously on the practical working out of the problem of securing as many miners as possible for the army, while retaining enough to maintain the essential coal supply; and ultimately they formed the recruiting courts for the whole mining industry. The Home Office appointed the "Coal Mining Organization Committee" which organized the industry for war purposes and was later merged in the Coal Control Department.

Many health questions had to be dealt with, such as T.N.T. and dope poisoning; the order for the early closing of shops had to be made and worked; and there were innumerable other war demands.

When the government reached the decision to allow the "*Conscientious Objectors*" who had not claimed or not obtained exemption to be provisionally released from prison on condition of engaging in non-military work useful to the country, it fell to the Home Office to organize their employment, a task not easy in itself and rendered doubly difficult by the outrageous conduct of the political anti-militarists who were mingled with the really conscientious.

Passing over several war duties mentioned incidentally in earlier chapters—the control of intoxicating liquors, of dangerous drugs, and of celluloid stores—there remains the *Press Bureau*. The cable censorship and the postal censorship, established by the

Home Secretary's warrants, were worked as departments of the War Office; but the Press Bureau was set up, by arrangement between the War Office and Admiralty and the representatives of the Press, as an independent body to guide the press as to what news they should or should not publish. The original intention was that its decisions should be voluntarily acted upon by the newspapers: but the situation soon arose of one paper publishing unauthorized news which the others loyally withheld, and the newspapers which obeyed the ruling of the Bureau were the first to demand that others should not be allowed to disobey. Hence it was that Regulation 27 of the Defence of the Realm Regulations, originally framed for other purposes, was applied to the press to meet a demand made by the press itself. While matters were in this position the Cabinet decided to transfer the Press Bureau to the Home Secretary; and, installed in the United Service Institution, it performed under his direction the double duty of circulating news to the press in this country and abroad and censoring war cables and war correspondence. The responsibility was one which brought to the Home Office some of the most difficult questions that arose in the whole course of the war; but happily the work of the Bureau was in charge of two directors, one a distinguished colonial administrator and the other a not less distinguished journalist, whose tact and experience found a solution for the inevitable conflicts of view.

Emergency Duties

The maintenance of order, being one of the normal functions of the Home Office, is not included among its war duties; but it was a duty which from 1916 onwards became increasingly difficult under war conditions—the police being on the one hand reduced in number by thirty or forty per cent. and loaded with new war duties, and on the other faced with the growth of industrial unrest, of Irish sedition, and of violent pacifism. In the last year of the war a new danger emerged, not of mere local disorder or riot, but of the coercion of the whole country by the organized stopping of its supplies of food, drink, fuel and light.

This threat began to materialize in the first months of 1919, and at the instance of a Committee of the Cabinet which sat from day to day in the Home Office, with the Home Secretary as chairman, an organization to combat the attempt was worked out by the Home Office and established by the government. On this occasion, however, the immediate causes of trouble were got over, and it was not until the great railway strike of September 1919, that the organization, further developed under the chairmanship of Sir Eric Geddes, came into full play and secured the absolute necessities of life to London and to other large areas which were deprived of their normal supplies by the almost complete stoppage of railway transport.

The organization depended for its effective working on the powers given to the Ministries of Food and Transport and other departments by the

Defence of the Realm Regulations; and when these were about to expire the government directed the Home Office to prepare a bill to give fresh powers in the event of another emergency. This was done and the bill was passed into law as the Emergency Powers Act, 1920. It operates only when an emergency exists, that is, a state of things arising from interference with supply and distribution on such a scale as is calculated to deprive the community of food and fuel and other essentials of life: and it provides that, after a state of emergency has been proclaimed, Orders in Council may be made conferring on the Government departments the powers necessary to secure the necessities of life to the community. It thus enables the Government to meet the emergency by instant action, but at the same time parliamentary control is fully secured. The proclamation of a state of emergency has to be communicated to Parliament, and, if Parliament is not then sitting, it must be summoned to meet within five days. The proclamation is effective only for a month, and, if the emergency continues, a new proclamation must be issued. Every Order in Council must be laid at once before Parliament and ceases to operate after seven days unless continued by resolutions of both Houses.

This course was followed on the outbreak of the great coal strike on 1st April, 1921. A proclamation was at once issued, and an Order in Council giving all necessary powers, prepared by the Home Office in consultation with the various departments, was passed and put in force, and was continued with one or two amendments by resolutions of both Houses.

Inspectors: or local authorities endowed with the necessary executive powers. When the executive work is given to local authorities, the Home Secretary's position as central authority may be such as to enable him to give instructions and directions, or advice and guidance only, or, again, instructions on some points and advice on others: and he may maintain his relations with the local authorities with the aid of inspectors, or only by correspondence and reports and interviews, or in both ways. Where officers of the inspector class are required, they may be either a large organized and localized staff, like the Factory Inspectors and the Immigration Officers, or a few Inspectors working the country from headquarters.

The central staff which deals with each subject of administration has also to undertake duties in aid of legislation on that subject. It collects the materials and prepares the instructions on which bills are drafted by the Parliamentary draftsman, revises the drafts, consults departments and public bodies interested in the proposals, and in all stages of the bill examines amendments and supplies the materials for their discussion in Committee or in the House. Hardly less important is the exercise of the legislative power in subordinate matters delegated to the department by Parliament.* Of this many illustrations have already been given. Parliament overburdened with work has tended more and more in recent years to delegate to Government departments the authority to make

* A full account of the development of *Delegated Legislation* is given in Mr. Cecil Carr's volume of that title.

statutory rules or orders on specified points, only retaining to itself in important matters a power of disallowance which there is rarely occasion to exercise: indeed it has again and again happened that Parliament, unable to agree on some contested point, has solved the difficulty by leaving it to be settled by rules made by the Home Secretary or some other minister. This delegation has the two-fold advantage that the rules can be made after such expert inquiry and full hearing of objectors as is impossible in ordinary parliamentary procedure, and that the rules can be modified to meet new conditions or to defeat evasions more easily and quickly than by the passing of amending acts of Parliament.

The legal work consists mainly in advising on the interpretation of statutes sometimes intricate and occasionally contradictory: and the experience of the senior administrative officers is such that they are fully qualified to deal with legal questions of this class. There are besides three legal members of the staff, one of them an Assistant Under Secretary of State, who specially devote themselves to the many questions of criminal law, nationality law, and workmen's compensation law that arise from day to day; and on questions relating to the law of summary jurisdiction the Chief Magistrate can be consulted. The Home Secretary is always entitled to obtain the advice of the Law Officers of the Crown, but recourse is had to them only on specially difficult points which are likely to become the subject of controversy and on which a ruling right or wrong must be given. It is not

he takes over as a going concern and for all new departures in policy; but in practice he interferes little in the day-to-day administration and finds his time fully occupied in the decision of the larger or more critical questions submitted to him and by his Cabinet and Parliamentary duties. In the last he is assisted by the Parliamentary Under Secretary, who takes part in the preparation and conduct of the more important bills, has charge of minor bills, explains difficulties to members of the House, and frequently receives deputations on behalf of his chief.

The administrative head of the Office is the Permanent Under Secretary of State. He is the Home Secretary's chief adviser, he deals with all matters of first importance, and in particular there pass through his hands all papers requiring the Home Secretary's personal decision, including the answers to questions in Parliament. He settles office arrangements and staff questions, and he presides at the departmental Whitley Council.

The two Assistant Under Secretaries of State who come next to him have charge of such sections of the work as he may from time to time delegate to them, and they take his place when he is absent. At present one of them (the Legal Assistant Under Secretary) takes all criminal work and in particular deals *ab initio* with all capital cases: while the other is mainly concerned with matters of industrial administration and the miscellaneous work, and has frequently to be in Geneva for the international conferences on labour questions and opium. He is also Accounting Officer for the department.

Next to them come the heads of the seven Administrative Divisions. They are designated "Assistant Secretaries" and each has under him four or five officers of the administrative class and four or five of the clerical class. The seven divisions and the work allotted to each are as follows :—

A (The Industrial Division) takes all work relating to Factories and Workshops, Shops, Truck, Workmen's Compensation, etc. The Factory Inspectorate is attached to this Division, and there is an assistant legal adviser for Workmen's Compensation.

B (The Aliens Division) takes all work relating to Aliens and Naturalization. The head of the Division, who is the Principal Assistant Secretary, has charge also of the administration of the Liquor Laws and is Chairman of the State Management Council. The Immigration Inspectorate is attached to this Division, and the staff includes an assistant legal adviser.

C (The Criminal Division) takes the Prerogative of Mercy and all criminal matters except Police administration and finance.

D (The Children's Division) takes Home Office Schools, Probation and Employment of Children and two matters of international agreement "Traffic in Women and Children" and "Obscene Publications" which frequently involve the attendance of the head of the Division at Geneva. This Division also takes Finance and Establishment questions. The Reformatory and Industrial Schools Inspectorate is attached.

E is a Miscellaneous Division which takes all subjects not assigned to any other Division, including all those described under the head of the "King's Pleasure," Registration and Elections, Private and Local Bills, Dangerous Drugs and Vivisection. The Inspectors of Explosives, Vivisection, and Dangerous Drugs are attached.

F (The Police Division) was formed during the war and now takes Police, the Maintenance of Order, Fire Brigades, the War Book, and Emergency Duties. The Inspectors of Constabulary belong to this Division.

G (The Irish Division) is a new division recently formed to take all work relating to Northern Ireland and the disbanded Royal Irish Constabulary. It takes also the Channel Islands and the Isle of Man.

The aim of this distribution of work is, so far as possible in dealing with some twenty-five or more separate subjects, to group together connected subjects and to give to each head of a division an approximately equal amount of responsible work. It will be seen that four of the divisions have each one closely connected group of subjects, but there are two divisions which have each to take two distinct groups, while Division E takes all the rest, a dozen or more disconnected matters.

Next there are three auxiliary Branches, the Registry, Accounts and Statistics. The head of each is a staff officer and they are manned by members of the various clerical grades, with "messengers" as paper keepers in the Registry.

The Registry receives all official letters and petitions coming into the office, some 100,000 a year,* dockets, numbers and registers them, keeps and arranges the files and finds the previous correspondence on any case or the old papers bearing on any question that arises—the last an essential matter and one which involves the keeping of many volumes of notes and subject indexes. It also registers and despatches outgoing letters and is responsible for the ultimate destruction of papers or their removal to the Record Office.

The Accounts Branch pays salaries and wages, examines some hundreds of monthly travelling accounts, and takes all the work, including bookkeeping, connected with the Home Office Vote of about £400,000 a year, and with the Northern Ireland Services Vote. It distributes the Police grants (more than £9,000,000 a year) and the Schools grants (about £400,000): and it collects all fines payable to the exchequer.

The Statistics Branch prepares all statistics required by the several divisions or called for by Parliament, compiles and publishes the annual volumes of Criminal Statistics, Workmen's Compensation Statistics and Licensing Statistics, and from time to time statistics relating to Elections, Home Office Schools and Dangerous Drugs. Staff is saved by the use of calculating machines of the latest type.

There are thirty shorthand typists and twenty-three other typists who are not attached to particular

* This figure does not include the great mass of "semi-official" correspondence, nor the official correspondence of the Inspectorates and the Prison Commissioners.

divisions or individuals—a wasteful arrangement—but are organized in "pools" under three women superintendents, who are responsible for seeing that the copying required by all divisions and branches is properly distributed and promptly completed, and for supplying shorthand writers to administrative officers as and when they are needed.

The constitution, duties and distribution of the Inspectorates have been mentioned in the preceding chapters. The Factory, Immigration, Schools, Explosives and Dangerous Drugs Inspectorates have their headquarters in the Home Office and require larger or smaller clerical establishments. These are manned from the general clerical staff of the Home Office and include a small branch which keeps the registers and collects the statistics of Factories, and the Central Aliens Registry which keeps a record of the names and residences of all aliens in the country. The Divisional and District Inspectors of Factories are provided with offices and clerks at their local centres. The two Inspectors of Constabulary divide England between them, and the two Vivisection Inspectors divide Great Britain.

In addition to many Inspectors who are scientific experts, the Home Office has several part-time expert advisers, including two experts in Lunacy who advise in capital cases, two analysts and two medical advisers for toxicological work.

The Prison Department is organized as a separate office. The four Commissioners and their secretary correspond to the administrative class, there are three inspectors, and the rest of the office staff is composed of men of the clerical and technical grades.

The total Home Office staff numbers 976. This includes 40 permanent and 13 temporary administrative officers, 36 staff officers and higher grade clericals, 156 clerks, 34 writing assistants, 56 typists and shorthand typists, 236 Inspectors (of whom some ten are mainly engaged in administrative work at headquarters), 154 Immigration Officers, 103 Inspectors' clerks, 7 school agents, and 62 office keepers and messengers. The figure also includes the Prison Department headquarters staff of 79. It does not include 30 charwomen, nor the telephone operators who are Post Office servants, nor the staff of the Anthrax Disinfecting Station.

All the staff, except the local Inspectors and outdoor officers with their clerks, are housed in one building, an advantageous arrangement as compared with a time when some of the subdepartments had separate offices. It is also a great advantage that the Home Office is in the block of buildings which contains the Foreign Office, the Colonial Office and the India Office, and is connected by a bridge with the block which contains the Ministry of Health, the Boards of Trade and Education and the Office of Works. The interior planning is less satisfactory. The building completed in 1877 was designed by Sir Gilbert Scott as gothic but was at the last moment altered by command of Lord Palmerston to a classic style: it contains a few large and lofty rooms on the first floor, provided at the expense of an enormous waste of space in the smaller rooms. The Secretary of State and the Under Secretaries occupy rooms on the first floor and the administrative divisions are

grouped as near them as possible, most of them on the same floor. Above are the quarters of the Registry, Accounts and Statistical Branches, and the Factory and Explosives Inspectorates, on the ground floor and basement the Prison Department, the Schools Inspectorate (immediately adjoining the Children's Division) and the Immigration Inspectorate.

The main entrance to the Office is in Whitehall, and faces the Cenotaph erected in memory of those who fell in the Great War. It is the Home Office that announces every year the arrangements for the ceremony on 11th November, the anniversary of the Armistice of 1918: and from the Home Office the King, passing the tablet which records the names of the forty-three members of the staff who fell in the war, comes out to lay his wreath at the foot of the Cenotaph and to share with his people the moments of silence in remembrance of the "Glorious Dead."

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